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No. 22] NEW DELHI, MAY 27—JUNE 2, 2007, SATURDAY/JYAISTHA 6—JYAISTHA 12, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय
(आर्थिक कार्य विभाग)
(बैंकिंग प्रभार)

नई दिल्ली, 18 मई, 2007

का.आ. 1575.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि उक्त अधिनियम की धारा 19 की उपधारा (2) के उपबंध इंडस्ट्रीयल डेवलपमेंट बैंक आफ इंडिया लिमिटेड पर उस सीमा तक लागू नहीं होंगे जहां तक उनका संबंध प्रस्तावित जीवन बीमा कंपनी के संयुक्त उद्यम की चुकता शेयर पूंजी के 30% से अधिक की इसकी शेयरधारिता से है।

[फा. सं. 18/2/2006-बीओ ए]
डी. पी. भारद्वाज, अवर सचिव

MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)

New Delhi, the 18th May, 2007

S. O. 1575.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendations of Reserve Bank of India, hereby declares that the provisions of sub-section (2) of Section 19 of the said Act shall not apply to Industrial Development Bank of India Ltd. insofar as they relate to its holding of the shares in excess of 30% of the paid up share capital of the proposed joint venture life insurance company.

[F. No. 18/2/2006-BOA]
D. P. BHARDWAJ, Under Secy.

नई दिल्ली, 23 मई, 2007

का.आ. 1576.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखंड (झ) के उपबंध उस सीमा तक केनरा बैंक पर लागू नहीं होंगे, जहां तक उनका संबंध श्री एम. बी. एन. राव द्वारा नाबार्ड कंसल्टेंसी सर्विसेज प्रा. लि. (नैबकोन्स) के बोर्ड में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/16/2000-बीओ-I]
जी. बी. सिंह, उप सचिव

New Delhi, the 23rd May, 2007

S. O. 1576. —In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Canara Bank insofar as it relates to taking up directorship of Shri M.B.N. Rao, on the Board of NABARD Consultancy Services Pvt. Ltd. (Nabcons).

[F. No. 20/16/2000-BO-I]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 23 मई, 2007

का. आ. 1577.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्द्वारा यह घोषणा करती है कि उक्त अधिनियम की धारा 13 व 15 (1) के उपबंध, इस अधिसूचना की तारीख से पांच वर्ष की अवधि के लिए इंडियन बैंक पर लागू नहीं होंगे ।

[फा. सं. 11/30/2004-बीओ ए]

डी. पी. भारद्वाज, अवर सचिव

New Delhi, the 23rd May, 2007

S. O. 1577.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India, hereby declares that the provisions of Sections 13 and 15 (1) of the said Act shall not apply, for a period of five years from the date of this Notification, to Indian Bank.

[F. No. 11/30/2004-BOA]

D. P. BHARDWAJ, Under Secy.

नई दिल्ली, 28 मई, 2007

का. आ. 1578.—भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा (2क) के साथ पठित धारा 25 की उपधारा (1) के खण्ड (ग ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा श्री पी. वी. शिवशंकर पिल्लै, सचिव, एसोसिएट बैंक्स आफिसर्स एसोसिएशन, स्टेट बैंक ऑफ त्रावणकोर को अधिसूचना की तारीख से 3 वर्ष की अवधि के लिए या उनका उत्तराधिकारी नामित किए जाने तक या उनके द्वारा स्टेट बैंक ऑफ त्रावणकोर का अधिकारी पद छोड़ने तक अथवा अगला आदेश होने तक, जो भी पहले हो, स्टेट बैंक आफ त्रावणकोर के निदेशक बोर्ड में अधिकारी कर्मचारी निदेशक के रूप में नामित करती है, बशर्ते वे लगातार छः वर्ष से अधिक की अवधि तक पद धारण नहीं करेंगे ।

[फा. सं. 9/1/2007-बीओ-I]

जी. बी. सिंह, उप सचिव

New Delhi, the 28th May, 2007

S. O. 1578. —In exercise of the powers conferred by clause (cb) of sub-section (1) of Section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby nominates Shri P. V. Sivasankara Pillai, Secretary, Associate Banks' Officers' Association, State Bank of Travancore as Officer Employee Director on the Board of Directors of State Bank of Travancore for a period of three years from the date of notification and thereafter until his successor has been nominated or until he ceases to be an officer of State Bank of Travancore, or until further orders, whichever is earlier, provided he shall not hold office continuously for a period exceeding six years.

[F. No. 9/1/2007-BO-I]

G. B. SINGH, Dy. Secy.

(राजस्व विभाग)

केन्द्रीय प्रत्यक्ष कर बोर्ड

(आय कर विभाग)

नई दिल्ली, 14 अप्रैल, 2007

सं. 1/2007

का. आ. 1579.—आय कर निदेशालय (अनुसंधान सांख्यकी, प्रकाशन एवं जन-सम्पर्क), को अब के बाद तत्काल प्रभाव से आय कर निदेशालय (जन-सम्पर्क, मुद्रण, प्रकाशन एवं राजभाषा) कहा जाएगा ।

[फा0 सं0 ए-41015/100/2006-प्र. VII]

एस. सी. सरकार, उप सचिव

(Department of Revenue)

CENTRAL BOARD OF DIRECT TAXES

(Income Tax Department)

New Delhi, the 14th April, 2007

No. 1/2007

S.O. 1579. —The Directorate of Income Tax (Research Statistics, Publication & Public Relations) shall henceforth be renamed as Directorate of Income Tax (Public Relations, Printing, Publication & Official Language) with immediate effect.

[F. No. A.-41015/100/2006-Ad. VII]

S. C. SARKAR, Dy. Secy.

नई दिल्ली, 24 मई, 2007

आय कर

का. आ. 1580.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आय कर नियमावली, 1962 के नियम 5 ग और 5 घ के साथ पठित आय कर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के

प्रयोजनार्थ 1-4-2005 से संगठन सेन्ट्रल पावर रिसर्च इन्स्टीटयूट, बंगलौर को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :–

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उपधारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ।

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :–

(क) लेखा बही नहीं रखेगा; अथवा

(ख) अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा ।

[अधिसूचना सं. 178/2007/फा. सं. 203/38/2006-आ.क.नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 24th May, 2007

INCOME TAX

S. O. 1580.—It is hereby notified for general information that the organization Central Power Research Institute, Bangalore, has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income Tax Act, 1961, read with rules 5C and 5D of the Income-tax Rules, 1962 with effect from 1-4-2005 in the category of 'other Institution' partly engaged in research activities subject to the following conditions :—

(i) The sums paid to the approved organization shall be utilized for scientific research.

(ii) The approved organization shall carry out scientific research through its faculty members of its enrolled students.

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the Income-tax Act, 1961 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139.

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

(a) fails to maintain books of accounts; or

(b) fails to furnish its audit report; or

(c) fails to furnish its statement of the sums received and asums applied for scientific research; or

(d) ceases to carry on its rescarch activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of Section 35 (1) (ii) of the Income Tax Act, 1961, read with Rules 5C and 5D of the Income Tax Rules, 1962.

[Notification No. 178/2007/F. No. 203/38/2006-ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 24 मई, 2007

आयकर

का. आ. 1581.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5 ग और 5 घ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2003 से संगठन वसंत दादा शुगर इन्स्टीटयूट, पुणे को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है :–

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उपधारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उपधारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ।

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :–

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा ।

[अधिसूचना सं. 177/2007/फा. सं. 203/13/2007-आ.क.नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 24th May, 2007

INCOME TAX

S. O. 1581.—It is hereby notified for general information that the organization Vasantdada Sugar Institute, Pune, has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income Tax Act, 1961, (said Act), read with Rules 5C and 5D of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2003 in the category of 'other Institution' partly engaged in research activities subject to the following conditions namely :—

(i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out scientific research through its faculty members of its enrolled students;

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

(a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or

(b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or

(c) fails to furnish its statement of donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or

(d) ceases to carry on its research activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rules 5C and 5D of the said Rules.

[Notification No. 177/2007/F. No. 203/13/2007-ITA-II]

RENU JAUHRI, Director

नई दिल्ली, 25 मई, 2007

आयकर

का. आ. 1582.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5 ग और 5 घ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2006 से संगठन निम्बकर एग्रीकल्चरल रिसर्च इन्स्टीट्यूट (एन ए आर आई), फाल्टन, महाराष्ट्र को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :–

(i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

(ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उपधारा (2) के स्पष्टीकरण में यथा

परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उपधारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत् सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा ।

(iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत् सत्यापित विवरण की प्रति प्रस्तुत करेगा ।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :–

(क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा

(ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा

(ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा

(घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ङ) उक्त नियमावली के नियम 5ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा ।

[अधिसूचना सं. 179/2007/फा. सं. 203/12/2007-आ.क.नि.-II]

रेनू जौहरी, निदेशक

New Delhi, the 25th May, 2007

INCOME-TAX

S. O. 1582.—It is hereby notified for general information that the organization Nimbkar Agricultural Research Institute (NARI), Phaltan, Maharashtra, has been approved by the Central Government for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income Tax Act, 1961, read with rules 5C and 5D of the Income tax Rules, 1962 with effect from 1-4-2006 in the category of 'other Institution' partly engaged in research activities subject to the following conditions :—

(i) The sums paid to the approved organization shall be utilized for scientific research.

(ii) The approved organization shall carry out scientific research through its faculty members of its enrolled students.

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to Sub-section (2) of Section 288 of the Income tax Act, 1961 and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under Sub-section (1) of Section 139.

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

(a) fails to maintain books of account ; or

(b) fails to furnish its audit report ; or

(c) fails to furnish its statement of the sums received and sums applied for scientific research ; or

(d) ceases to carry on its research activities or its research activities are not found to be genuine; or

(e) ceases to conform to and comply with the provisions of Section 35(1)(ii) of the Income Tax Act, 1961, read with Rules 5C & 5D of the Income Tax Rules, 1962.

[Notification No. 179/2007/F. No. 203/12/2007/ITA-II]

RENU JAUHRI, Director

विदेश मंत्रालय

(सी. पी. वी. प्रभाग)

नई दिल्ली, 1 मई, 2007

का. आ. 1583.—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम, 1948 (1948 का 41 वां) की धारा 2 के अंक (क) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा भारत का राजदूतावास कुवैत में श्री जौन सेबसटइन, सहायक को 1 मई, 2007 से सहायक कौंसली अधिधारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी. 4330/01/2006]

प्रीतम लाल, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C. P. V. Division)

New Delhi, the 1st May, 2007

S. O. 1583.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorise Shri John Sebastian, Assistant in the Embassy of India, Kuwait to perform the duties of Assistant Consular Officer with effect from 1st May, 2007.

[No. T. 4330/01/2006]

PRITAM LAL, Under Secy. (Consular)

नागर विमानन मंत्रालय

नई दिल्ली, 15 मई, 2007

का.आ. 1584.—सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राज्य सरकार एतद्द्वारा दिनांक 1 जुलाई, 1997 के सां.आ. संख्या 1796 के द्वारा नागर विमानन मंत्रालय में भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है :

उक्त सूचना में, सारणी में—

(1) क्रम संख्या (1) के सामने :—

(क) कॉलम 1 में, "हवाई अड्डा निदेशक" शब्दों के स्थान पर "उप महानिदेशक (भूमि प्रबंधन)" शब्द व कोष्ठक प्रयुक्त होंगे;

(ख) कॉलम 2 में, मौजूदा प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि प्रयुक्त होगी : "दिल्ली में स्थिति भारतीय विमानपत्तन प्राधिकरण द्वारा लीज पर ली गई अथवा लीज की गई भूमि से संबंधित परिसर जिसमें दिल्ली अंतरराष्ट्रीय विमानपत्तन (प्राइवेट) लिमिटेड को लीज पर दी गई सम्पत्ति शामिल है,"

(2) क्रम संख्या 2 के सामने, कॉलम 1 तथा कॉलम 2 व उनसे संबंधित प्रविष्टियां समाप्त कर दी जाएंगी;

(3) क्रम संख्या 3 के सामने :—

(क) कॉलम 1 में, "हवाई अड्डा निदेशक" शब्दों के स्थान पर "उप महानिदेशक (भूमि प्रबंधन)" शब्द व कोष्ठक प्रयुक्त होंगे;

(ख) कॉलम 2 में, मौजूदा प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि प्रयुक्त होगी : "मुम्बई में स्थिति भारतीय विमानपत्तन प्राधिकरण द्वारा लीज पर ली गई अथवा लीज की गई भूमि से संबंधित परिसर जिसमें मुंबई अंतरराष्ट्रीय विमानपत्तन (प्राइवेट) लिमिटेड को लीज पर दी गई सम्पत्ति शामिल है,"

(4) क्रम संख्या 4 के सामने, कॉलम 1 तथा कॉलम 2 तथा उनसे संबंधित प्रविष्टियां समाप्त कर दी जाएंगी;

(5) क्रम सं. 8 के सामने, कॉलम 1 की प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां प्रयुक्त होंगी :—

"भारत के हवाई अड्डों, सिविल एन्क्लेवों तथा अन्य स्टेशनों के क्षेत्रीय कार्यकारी निदेशक अथवा हवाई अड्डा निदेशक अथवा हवाई अड्डा नियंत्रक अथवा प्रभारी अधिकारी "।

[फाईल सं. ए.वी. 20036/081/2004-एएआई]

संजीव जिन्दल, अवर सचिव

पाद टिप्पणी—प्रधान अधिसूचना दिनांक 1 जुलाई, 1997 के सां.आ. 1796 के द्वारा भारत के राजपत्र में प्रकाशित हुई थी तथा इसे बाद में दिनांक 26 फरवरी, 2001, के सां. आ. 486 के द्वारा संशोधित किया गया ।

MINISTRY OF CIVIL AVIATION

New Delhi, the 15th May, 2007

S.O. 1584.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following further amendments in the notification of Government of India in the Ministry of Civil Aviation *vide* number S.O. 1796, dated the 1st July, 1997, namely :—

In the said notification, in the Table,—

(1) against serial number 1,—

(a) in column 1, for the words "Airport Director", the words and brackets "Deputy General Manager (Land Management)" shall be substituted;

(b) in column 2, for the existing entry the following entry shall be substituted, namely :—

"premises belonging to leased or taken on lease by the Airports Authority of India situated at Delhi including the property leased to Delhi International Airport (Private) Limited" ;

(2) against serial number 2, in columns 1 and 2 and the entries relating thereto shall be omitted;

(3) against serial number 3,—

(a) in column 1, for the words "Airport Director", the words and brackets "Deputy General Manager (Land Management)" shall be substituted;

(b) in column 2, for the existing entry the following entry shall be substituted, namely :—

"premises belonging to leased or taken on lease by the Airports Authority of India situated at Mumbai including the property leased to Mumbai International Airport (Private) Limited;"

(4) against serial number 4, in columns 1 and 2 and the entries relating thereto shall be omitted;

(5) against serial number 8, for the entries in column 1, the following entries shall be substituted, namely :—

"Regional Executive Director or Airport Director or Airport Controller or Officer-in-charge of the Airports, civil enclaves and other stations in India".

[F. No. AV. 20036/081/2004-AAI]

SANJIV JINDAL, Under Secy.

Foot Note :—The Principal notification was published in the Gazette of India *vide* number S.O. 1796, dated the 1st July, 1997 and subsequently amended *vide* number S.O. 486, dated, the 26th February, 2001.

महिला एवं बाल विकास मंत्रालय

नई दिल्ली, 23 अप्रैल, 2007

का.आ. 1585.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, एतद्द्वारा महिला एवं बाल विकास मंत्रालय के निम्नलिखित कार्यालय को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :

खाद्य एवं पोषाहार बोर्ड,
पश्चिमी क्षेत्र का कार्यालय,
केन्द्रीय सदन, ए-301 (सी विंग)
सैक्टर 10, सी.बी.डी. बेलापुर,
नवी मुम्बई-400614

[संख्या 11017/2/99-हिंदी]

पी.एस. सरीन, उप सचिव

MINISTRY OF WOMEN AND CHILD DEVELOPMENT

New Delhi, the 23rd April, 2007

S.O. 1585.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government, hereby, notifies the following office of the Ministry of Women and Child Development, more than 80% staff whereof have acquired working knowledge of Hindi :

Food and Nutrition Board,
Western Region,
Kandriya Sadan, A-301 (C Wing,)
Sector-10, CBD Belapur,
Navi Mumbai-400614.

[No. 11017/2/99-Hindi]

P. S. SAREEN, Dy. Secy.

संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

नई दिल्ली, 25 मई, 2007

का.आ. 1586.—राजभाषा नियम (संघ के शासकीय प्रयोजन के लिए प्रयोग), 1976 के नियम 10 के उप नियम (4) के अनुसरण में केन्द्र सरकार, डाक विभाग के अधीनस्थ कार्यालय अगत्ती उप डाकघर को जिसके 80 प्रतिशत कर्मचारियों (ग्रुप 'घ' कर्मचारियों को छोड़कर) ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है ।

[सं. 11017-1/2007-रा.भा.]

एस. के. चक्रवर्ती, उप महानिदेशक (एम.एम. एवं रा.भा.)

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Posts)

New Delhi, the 25th May, 2007

S.O. 1586.—In pursuance of Rule 10 Sub-Rule (4) of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies Sub-Post Office, Agatti, a subordinate offices of the Department of Posts where 80 per cent staff has acquired the working knowledge of Hindi .

[No. 11017-1/2007-OL]

S. K. CHAKRABARTI, Dy. Director General (MM &OL)

कोयला मंत्रालय

शुद्धि पत्र

नई दिल्ली, 28 मई, 2007

का.आ. 1587.—भारत के राजपत्र, तारीख 3 मार्च, 2007 के भाग II, खण्ड 3, उपखण्ड (ii) में पृष्ठ क्रमांक 1294 से 1297 पर प्रकाशित भारत सरकार, कोयला मंत्रालय की अधिसूचना संख्या का.आ. 629, तारीख, 13 फरवरी, 2007 में :—

पृष्ठ क्रमांक 1294 में,

(i) पंक्ति 1, "कोयला भारक" के स्थान पर "कोयला धारक" पढ़ें ।

(ii) पंक्ति 18 "किया जाना है।" के स्थान पर "किया जाता है।" पढ़ें ।

पृष्ठ क्रमांक 1295 अनुसूची "क",

(i) तालिका में, "1309 एकड़" के स्थान पर "13.09 एकड़" पढ़ें।

(ii) ग्राम जोबगा (भाग) में अर्जित किए गए प्लाट संख्यांक में । "और 907 (भाग)" के स्थान पर "और 987 (भाग)" पढ़ें ।

अनुसूची "ख", में, ग्राम स्तंभ के नीचे,

(iii) क्रमांक संख्या 2, " केतकी" के स्थान पर "केतका" पढ़ें ।

(iv) "ग्राम जोबगा (भाग) में अर्जित प्लाट संख्या" के स्थान पर "ग्राम जोबगा (भाग) में अर्जित किए गए प्लाट संख्या" पढ़ें ।

पृष्ठ क्रमांक 1296

(i) "ग्राम केतकी (भाग) में अर्जित प्लाट संख्या" के स्थान पर "ग्राम केतका (भाग) में अर्जित किए गए प्लाट संख्या" पढ़ें।

(ii) "ग्राम लाछा (भाग) में अर्जित प्लाट संख्या" के स्थान पर "ग्राम लाछा (भाग) में अर्जित किए गए प्लाट संख्या" पढ़ें।

सीमा वर्णन में,

(i) "ज-ज1" के स्थान पर "ज-ज1-ज2-ज3" पढ़ें।

रेखा ज-ज1-ज2-ज 3 में,

(ii) पंक्ति 1, "876 ज2-ज3 और" के स्थान पर "876 और" पढ़ें।

(iii) "ज6-ज7" के स्थान पर "ज6-ज7-ज8" पढ़ें।

रेखा "ज6-ज7-ज8 में,

(iv) पंक्ति 1, "हुए-ज 8643" के स्थान पर "हुए प्लाट संख्या 643" पढ़ें।

पृष्ठ क्रमांक 1297 में,

"झ-भ-ट-ठ" के स्थान पर "झ-त्र-ट-ठ" पढ़ें।

[फा. सं. 43015/9/2003-पीआरआईडब्ल्यू]

एम. शहाबुद्दीन, अवर सचिव

शुद्धि पत्र

नई दिल्ली, 28 मई, 2007

का.आ. 1588.--भारत के राजपत्र, तारीख 17 फरवरी, 2007 के भाग-II, खंड 3, उपखंड (ii) में पृष्ठ क्रमांक 961 से 963 पर प्रकाशित भारत सरकार, कोयला मंत्रालय की अधिसूचना संख्या का.आ. 493, तारीख 7 फरवरी, 2007 में :-

पृष्ठ क्रमांक 962 पर

ग्राम चऊरा (भाग) में अर्जित किए गए प्लाट संख्याक में,

पंक्ति 2, "679 से 686से" के स्थान पर "679 से 686" पढ़ें।

पृष्ठ क्रमांक 963 पर

सीमा वर्णन में, रेखा क-ख में,

(i) पंक्ति 1, "ग्राम घोघर नाले" के स्थान पर "घोघर नाले" पढ़ें।

(ii) "ग-घ" के स्थान पर "ग-घ-ङ-च" पढ़ें।

रेखा ग-घ-ङ-च में,

(iii) पंक्ति 1, "प्लाट संख्या ङ-च 1034" के स्थान पर "प्लाट संख्या 1034" पढ़ें।

(iv) "च-छ" के स्थान पर "च-छ-छ1-ज" पढ़ें।

रेखा च-छ-छ1 -ज में,

(v) पंक्ति 1, "630, छ 1-ज 54" के स्थान पर "630, 54" पढ़ें।

रेखा ज 1-झ-क में,

(vi) पंक्ति 2, "हुई बिन्दु" के स्थान पर "हुई आरंभिक बिन्दु" पढ़ें।

[फा. सं. 43015/23/2004-पीआरआईडब्ल्यू]

एम. शहाबुद्दीन, अवर सचिव

विद्युत मंत्रालय

नई दिल्ली, 18 मई, 2007

का.आ. 1589.—केंद्र सरकार, सार्वजनिक परिसर (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विद्युत मंत्रालय, भारत सरकार की अधिसूचना संख्या का.आ. 1600, दिनांक 8 जुलाई, 1993 में निम्नलिखित संशोधन करती है :--

उक्त अधिसूचना की सारणी में क्रम सं. 1 और संबंधित प्रविष्टियां निम्न से प्रतिस्थापित होंगी, नामशः

"1. श्री एस.ए. रहीम, उप प्रबंधक (सिविल), एनटीपीसी लिमिटेड, कवास गैस विद्युत परियोजना, आदित्य नगर, चौरयासीप्रांत, जिला सूरत, गुजरात ।	एनटीपीसी लिमिटेड के अथवा इसके द्वारा पट्टे पर लिए गए और गैस विद्युत परियोजना, आदित्य नगर, चौरयासीप्रांत, जिला सूरत, गुजरात, पिन-394516 के प्रशासनिक नियंत्रण में आने वाले सभी स्थान।"

नोट : मूल अधिसूचना सं. का.आ. 1600 दिनांक 8 जुलाई, 1993 भारत के राजपत्र में दिनांक 24 जुलाई, 1993 को प्रकाशित हुई थी।

[फा. सं. 8/6/1992-थर्मल-I]

हरीश चन्द्र, वरिष्ठ सलाहकार (विद्युत)

MINISTRY OF POWER

New Delhi, the 18th May, 2007

S.O. 1589.— In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendments in the notification of the Government of India, in the Ministry of Power number S.O. 1600 dated the 8th July, 1993, namely :—

In the said notification, in the Table, against serial number 1 and the entries relating thereto, the following shall be substituted, namely :—

"1. Shri S.A. Raheem, Deputy Manager (Civil), NTPC Limited, Kawas Gas Power Project, Aditya Nagar, Choryasiprant, District Surat, Gujarat	All premises belonging to, or taken on lease by NTPC Limited and under the administrative control of its Kawas Gas Power Project at Aditya Nagar, Chroyasiprant, District–Surat, Gujarat, PIN : 394 516."

Note : The principal notification number S.O. 1600 dated the 8th July, 1993 was published in the Gazette of India dated the 24th July, 1993.

[F. No. 8/6/1992-Th. I]

HARISH CHANDRA, Senior Adviser (Power)

नई दिल्ली, 18 मई, 2007

का.आ. 1590.—केंद्र सरकार, सार्वजनिक परिसर (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विद्युत मंत्रालय, भारत सरकार की अधिसूचना संख्या का.आ. 299, दिनांक 29 दिसंबर, 1995 में निम्नलिखित संशोधन करती है :—

उक्त अधिसूचना की सारणी में क्रम सं. (1) और (2) से संबंधित प्रविष्टियां निम्न से प्रतिस्थापित होंगी, नामश:

"श्री विद्याभूषण महापात्रा, प्रबंधक, (मानव संसाधन), एनटीपीसी लि. कहलगांव सुपर थर्मल पावर प्रोजेक्ट, बिहार	एनटीपीसी लिमिटेड के कहलगांव सुपर थर्मल पावर प्रोजेक्ट, (डाकघर दीप्तिनगर, जिला भागलपुर), कहलगांव-813203, बिहार के स्वामित्व के अथवा इससे संबंधित अथवा इसके द्वारा पट्टे और किराये पर लिए गए सभी परिसर, क्वार्टर, संपदा, संपत्तियां एवं अन्य स्थान।"

नोट : मूल अधिसूचना सं. का.आ. 299 दिनांक 29 दिसंबर, 1995 भारत के राजपत्र में दिनांक 3 फरवरी, 1996 को प्रकाशित हुई थी।

[फा. सं. 8/6/1992-थर्मल-I]

हरीश चन्द्र, वरिष्ठ सलाहकार (विद्युत)

New Delhi, the 18th May, 2007

S.O. 1590.— In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendments in the notification of the Government of India, in the Ministry of Power number S.O. 299 dated the 29th December, 1995, namely :—

In the said notification, in the Table, for the entries under columns (1) and (2), the following shall be substituted, namely :—

"1. Shri Bidya Bhusan Mahapatra, Manager (Human Resources), NTPC Limited, Kahalgaon Super Thermal Power Project, Bihar	All premises quarters, estates, properties and other accommodation owned or belonging to, or leased and rented by Kahalgaon Super Thermal Power Project of NTPC Limited located at (P.O. Deeptinagar, District-Bhagalpur), Kahalgaon-813 203, Bihar".

Note : The principal notification number S.O. 299 dated the 29th December, 1995 was published in the Gazette of India dated the 3rd February, 1996.

[F. No. 8/6/1992-Th. I]

HARISH CHANDRA, Senior Adviser (Power)

नई दिल्ली, 18 मई, 2007

का.आ. 1591.—केंद्र सरकार, सार्वजनिक परिसर (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए विद्युत मंत्रालय, भारत सरकार की अधिसूचना संख्या का.आ. 1257 दिनांक 27 मार्च, 2002 में निम्नलिखित संशोधन करती है :—

उक्त अधिसूचना की सारणी में क्रम सं. (1) और संबंधित प्रविष्टियां निम्न से प्रतिस्थापित होंगी, नामश:

"श्री जॉन फिलिप एम., उप प्रबंधक, (मानव संसाधन), एनटीपीसी लि. विंध्याचल।	एनटीपीसी लिमिटेड के अथवा इसके द्वारा पट्टे पर लिए गए और विन्ध्याचल, सुपर थर्मल पावर स्टेशन, डाकघर विन्ध्यनगर जिला सीधी, मध्य प्रदेश के प्रशासनिक नियंत्रण में आने वाले सभी स्थान।"

नोट : मूल अधिसूचना सं. का.आ. 1257 दिनांक 27 मार्च, 2002 भारत के राजपत्र में दिनांक 13 अप्रैल, 2002 को प्रकाशित हुई थी।

[फा. सं. 8/6/1992-थर्मल-I]

हरीश चन्द्र, वरिष्ठ सलाहकार (विद्युत)

New Delhi, the 18th May, 2007

S.O. 1591.— In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendments in the notificationof the Government of India, in the Ministry of Power number S.O. 1257 dated the 27th March, 2002, namely :—

In the said notification, in the Table, against serial number 1 and the entries relating there to, the following shall be substituted, namely :—

"1. Shri John Philip M, Deputy Manager (Human Resources), NTPC Limited, Vindhyachal.	All premises belonging to, or taken on lease by NTPC Limited and under the administrative control of its Vindhyachal Super Thermal Power Station at Post Office Vindhyanagar, District- Sidhi, Madhya Pradesh."

Note : The principal notification number S.O. 1257 dated the 27th March, 2002, was published in the Gazette of India dated the 13th April, 2002.

[F. No. 8/6/1992-Th. I]

HARISH CHANDRA, Senior Adviser (Power)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 21 मई, 2007

का.आ. 1592.-भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/किये गये हैं :--

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 1554 (भाग 2) : 1988 की संशोधन संख्या 1	1 मई, 1994	17-5-2007
2	आई एस 1554 (भाग 2) : 1988 की संशोधन संख्या 2	2 जनवरी, 2007	17-5-2007

इन भारतीय संशोधनों की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पुणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 09/टी-13]

पी. के. मुखर्जी, वैज्ञा. एफ एवं प्रमुख (विद्युत तकनीकी)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 21st May, 2007

S. O. 1592.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards	No. & year of the Amendments	Date from which the Amendments shall have effect
(1)	(2)	(3)	(4)
1	IS 1554 (Part 2): 1988 Specification for PVC Insulated (Heavy Duty) Electric Cables Part 2 For working voltages from 3.3 kV up to and including 1 100 kV (Second Revision)	1 May, 1994	17-05-2007
2	IS 1554 (Part 2): 1988 Specification for PVC Insulated (Heavy Duty) Electric Cables Part 2 For working voltages from 3.3 kV up to and including 1 100 kV (Second Revision)	2 January, 2007	17-05-2007

Copy of these Amendments are available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : ET 09/T-13]

P. K. MUKHERJEE, Sc. F & Head (Electro-technical)

नई दिल्ली, 24 मई, 2007

का.आ. 1593.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम (4) के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं (फरवरी-मार्च, 2007 महिना के लिये)

अनुसूची

क्रम सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा.मा. संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6			7
1.	5315454	05-02-07	मेसर्स आर पी मेटल प्रोडक्टस नारायणपुर पो.आ. आर गोपालपुर जिला-उत्तर 24 परगना पिन-700136 पश्चिम बंगाल	इस्पात के टक्कर कब्जे	1341			1992
2.	5316052	12-02-07	मेसर्स मनपन्द सीमेंट प्राई. लिमि. मंगलपुर इंडस्ट्रियल एस्टेट रानीगंज-713347 जिला-वर्धमान, पश्चिम बंगाल	पोर्टलैंड धातुमल सीमेंट	455			1989
3.	5315959	12-02-07	मेसर्स ट्रिनिटि लैमिनेशन क.प्रा. लिमिटेड 103/23, फोरशोर रोड हावड़ा-711102 पश्चिम बंगाल	लकड़ी के सपाट दरवाजे के शटर	2202	1		1999
4.	5316860	16-02-07	मेसर्स रॉयल कंक्रीट प्रोडक्टस (प्राई) लिमिटेड) जी टी रोड, बेलुरूई सीतारामपुर-713359 वर्धमान, पश्चिम बंगाल	पोर्टलैंड धातुमल सीमेंट	455			1989
5.	5317256	22-02-07	मेसर्स नंदन ईलेकट्रिक्स प्रा.लि. 3जी गकगन सरकार रोड कोलकाता-700010 पश्चिम बंगाल	टंगस्टन तन्तुवाले विविध (रात्रि) बिजली के बल्ब	6701			1985
6.	5317357	23-02-07	मेसर्स प्रियांका प्लाईवुड प्रा.लि. मौजा-पांचधड़ा बाजार पो.आ. चंडीतला हुगली-712306 पश्चिम बंगाल	लकड़ी के सपाट दरवाजे के शटर	2202	1		1999
7.	5319664	15-03-07	मेसर्स डी पी ब्लॉक (प्रा.) लि. बादुरिया नतुन रास्ता अनारपुर पो. आ. व ग्राम : बादुरिया जिला : 24 परगना (उत्तर) पिन : 743401 पश्चिम बंगाल	लकड़ी के सपाट दरवाजे के शटर	2202	2		1999

1	2	3	4	5	6	7	
8.	5319765	5-03-07	मेसर्स बी एस प्रोग्रेसीभ (प्रा.) लि. गंगारामपुर, पु.स्टे. विष्णुपुर डायमंड हार्बर रोड, विष्णुपुर दक्षिण 24 परगना, पश्चिम बंगाल	सामान्य प्रयोजनों के लिए प्लाईवुड	303		1989
9.	5320144	5-3-07	मेसर्स रेजेंसी प्लाइवुड इंडस्ट्रीज (प्रा.) लि. बकराहाट रोड ग्राम : चरकतला पो. आ. रसपुंज जिला-24 परगना (द.) पश्चिम बंगाल	सामान्य प्रयोजनों के लिए प्लाईवुड	303		1989
10.	5320649	5-3-07	मैसर्स रैमको इंडस्ट्रीज लिमिटेड दीवानमारो आयमा पो. आ. हरियातारा पु. स्टे खड़गपुर (एल) जिला: पश्चिम मोदिनीपुर -721301 पश्चिम बंगाल	43 ग्रेड पोर्टलैंड साधारण सीमेंट	8112		1989
11.	5321247	8-3-07	मैसर्स जी के प्लास्टिक्स प्रा. लिमिटेड राजहाट, दिल्ली रोड, ग्राम : राजहाट हुगली - 712123 पश्चिम बंगाल	पेय जल आपूर्ति के लिए संविरचित पी वी सी के फिटिंग	10124	2	1988
12.	5321146	9-3-07	मैसर्स हाइड्रो कार्बन्स एंड केमिकल्स प्लॉट नं 26 (पार्ट) उलुबेरिया इंडस्ट्रियल ग्रोथ सेन्टर पो. आं. बिरशिबपुर उलुबेरिया जिला-हावड़ा- 711316 पश्चिम बंगाल	नये विद्युत रोधन तेल	335		1993
13.	5322855	13-3-07	मेसर्स लुमिनो इंडट्रीज लिमिटेड बिप्रन्नपारा, जालान कॉम्प्लेक्स जंगलपुर, डोमजूर हावड़ा- 711411 पश्चिम बंगाल	शिरोपरि प्रेषणों के लिए एल्यूमीनियम के लड़दार चालक	398	1	1996
14.	5322956	13-3-07	मेसर्स लेसर केबिल्स प्राई. लिमि. बिप्रन्नपारा, जालान कॉम्प्लेक्स पु. स्टे. डोमजुर हावड़ा- 711411 पश्चिम बंगाल	शिरोपरि प्रेषणों के लिए एल्यूमीनियम के लड़दार चालक	398	1	1996
15.	5322754	15-3-07	मेसर्स पावर केबिल इंडस्ट्रीज पी-1 सोनारपुर रोड पो. आ. ब्रेस ब्रिज कोलकाता-700088 पश्चिम बंगाल	शिरोपरि प्रेषणों के लिए एल्यूमीनियम मिश्रधातु, के लड़दार चालक	398	4	1994

1	2	3	4	5	6	7	7
16.	5323857	21-3-07	मैसर्स गननायक केबिल इंडस्ट्रीज पंचानन इंडस्ट्रियल कॉम्प्लेक्स घोषपारा, धारसा, पंचान्नतला जी आइ पी कॉलोनी हावड़ा- 711321 पश्चिम बंगाल	1100 वो. तक के कार्यकारी वोल्टता के लिए पी वी सी रोधित केबिल	694		1990
17.	5323958	9-3-07	मेसर्स जी के प्लास्टिक्स प्रा. लि. राजहाट, दिल्ली रोड, ग्राम: राजहाट हुगली-712123 पश्चिम बंगाल	पेय जल आपूर्ति के लिए अप्लास्टिकित पी वी सी पाइप	4985		2000
18.	5324556	15-3-07	मेसर्स लेसर केबिल्स प्राई. लि. बिप्रन्नपारा, जालान कम्प्लेक्स पु. स्टे, डोमजुर, हावड़ा- 711411 पश्चिम बंगाल	शिरोपरि प्रेशणों के लिए एल्यूमीनियम के चालक	398	1	1996
19.	5325659	26-3-07	मेसर्स बी एस इंडस्ट्रीज उन्नयनी इंडस्ट्रियल एस्टेट पो. आ. बोरसूल-713124 जिला-वर्धमान पश्चिम बंगाल	शिरोपरि प्रेशणों के लिए एल्यूमीनियम के चालक एल्यूमीनियम मिश्रधातु के चालक	398	1	1996
20.	5325558	21-3-07	मेसर्स बी एस इंडस्ट्रीज उन्नयनी इंडस्ट्रियल एस्टेट पो. आ. बोरसूल-713124 जिला-वर्धमान पश्चिम बंगाल	शिरोपरि प्रेशणों के लिए एल्यूमीनियम के चालक जस्तीकृत इस्पात प्रबलित	398	2	1996
21.	5326257	28-3-07	मेसर्स रोहिनी फायर सेफटि प्रा. लि. पान्डुआ-कालना रोड पो. आ. इलसोबा मन्डलाई जिला-हुगली-712146 पश्चिम बंगाल	अग्निशमन हेतु यांत्रिक झाग उत्पन्न करने के लिए झाग सांद्र (यौगिक) भाग 1 : प्रोटीन झाग	4989	1	1985
22.	5326358	28-3-07	मेसर्स रोहिनी फायर सेफटि प्रा. लि. पान्डुआ-कालना रोड पो. आ.इलसोबा मन्डलाई जिला-हुगली-712146 पश्चिम बंगाल	अग्निशमन हेतु यांत्रिक झाग उत्पन्न करने के लिए झाग सांद्र भाग 2 : जलीय फिल्म बनाने वाली झाग (ए एफ एफ एफ)	4989	2	1984

[सं. सी एम डी/13:11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 24th May, 2007

S. O. 1593.— In pursuance of sub-regulation (5) of regulation (4) of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the grant of licences particulars of which are given in the following schedule (for the month of Feb- March 2007)

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part.	Sec.	Year
1	2	3	4	5	6		7	
1.	5315454	05.02.2007	M/s. R.P.Metal Products Narayanpur P. O. Gopalpur North 24 Parganas Pin: 700136, W.B.	Steel Butt Hinges	1341			1992
2.	5316052	12.02.2007	M/s.Manpasand Cement Pvt.Ltd. Mangalpur Industrial Estate, Raniganj -713347 Dist. Burdwan, W.B.	Portland Slag Cement	455			1989
3.	5315959	12.02.2007	M/s. Trinity Lamination Co. Pvt.Ltd. 103/23, Foreshore Road Howrah-711102, W.B.	Wooden Flush Shutters	2202	1		1999
4.	5316860	16.02.2007	M/s. Royal Concrete Products (P) Ltd. G.T.Road, Belurui Sitarampur-713359 Burdwan, W.B.	Portland Slag Cement	455			1989
5.	5317256	22.02.2007	M/s. Nandan Electricals P. Ltd. 3G Gagan Sarkar Road Kolkata -700010.	Tungsten Filament Misc. Electric Lamp	670	1		1985
6.	5317357	23.02.2007	M/s. Priyanka Plywood Pvt.Ltd. Mouza - Panchghara P.O. Panchghara Bazar P.S. Chanditala Dist. Hooghly-712306,W.B.	Wooden Flush Door Shutters	2202	1		1999
7.	5319664	5.3.07	M/s.Dee Pee Block Board (Pvt.) Ltd Baduria Natun Rasta Anarpur, P.O. & Vill. Badúria Dist. 24 parganas(N) Pin: 743401, W. B.	Wooden flush door shutters	2202	I		1999
8.	5319765	5.3.07	M/s. B.S. Progressive (Pvt.) Ltd. Gangarampur P.S. Bishnupur Diamond Harbour Road Dist. 24 Parganas(S)	Plywood for general purposes	303			1989
9.	5320144	5.3.07	M/s. Regeny Plywood Inds.(Pvt.) Ltd. Bakrahat Road Vill: Charaktalla P.O. Ras Punja Dist. 24 Parganas (S)	Plywood for general purposes	303			1989

1	2	3	4	5	6	7	
10.	5320649	5.3.07	M/s. Ramco Industries Ltd. Dewanmaro Ayma P.O. Hatiara P.S. Kharagpur (L) Dist. Paschim Midnapore	Ordinary Portland Cement 43 Grade	8112		1989
11.	5321247	8.3.07	M/s. G.K. Plastic Pvt. Ltd. Rajhat, Delhi Road Vill : Rajhat Dist. Hooghly-712123	Fabricated PVC fittings for potable water supplies	10124	2	1988
12.	5321146	9.3.07	M/s. Hydro Carbons & Chemicals Plot No. 26 (Part) Uluberia Industrial Growth Center P.O. Birshibpur Uluberia, Howrah -711316	New Insulating oils	335		1993
13.	5322855	13.3.07	M/s. Lumino Inds. Ltd Biprannapara Jalan Complex Domjur Howrah - 711411	Aluminium conductors for overhead transmission Aluminium Alloy	398	1	1996
14.	5322956	13.3.07	M/s. Laser Cables Pvt. Ltd Biprannapara Jalan Complex Domjur Howrah-711411	-Do-	398	1	1996
15	5322754	15.3.07	M/s. Power Cable Inds P-1 Sonarpur Road Kolkata - 700088.	-Do-	398	4	1994
16.	5323857	21.3.07	M/s. Gananayak Cable Industries Panchanan Industrial Complex Ghoshpara, Dharsa, Panchanantala GIP Colony Howrah -711321	PVC Insulated Cables for working voltages upto & including 1100V.	694		1990
17.	5323958	9.3.07	M/s. G.K. Plastics Pvt. Ltd. Rajhat Delhi Road Rajhat Dist. Hooghly-712123	Unplasticized PVC pipes for potable water supplies	4985		2000
18.	5324556	15.3.07	M/s. Laser Cables Pvt. Ltd Biprannapara Jalan Complex Domjur Howrah -711411	Al. Conductors for overhead transmission - Alu.stranded conductors	398	4	1994
19.	5325558	21.3.07	M/s. B.S. Industries Unnayan Industrial Estate P.O. Boral Burdwan - 713124	Al. conductors for overhead transmission - Al. conductors, Galvanized steel reinforces	398	2	1996

1	2	3	4	5	6		7
20.	5325659	26.3.07	M/s. B.S. Industries Unnayan Industrial Estate, P. O. Boral Burdwan - 713124	Alu. conductors for overhead transmission- Alu. Alloy conductors	398	1	1996
21.	5326257	28.3.07	M/s. Rohini Fire Safety Pvt. Ltd. Pandua - Kalna Road P.O. Ilsoba Mondalai Dist. Hooghly-712146 West Bengal	Foam concentrate (compound) for producing mechanical foam for fire fighting Part I Protein foam	4989	1	1985
22.	5326358	28.3.07	M/s. Rohini Fire Safety Pvt Ltd., Pandua -Kalna Road P.O. Ilsoba Mondalai Dist Hooghly-712146	Foam concentrate for producing Mechanical foam for fire fighting Part 2 : Aqueous Film Forming Foam (AFFF)	4989	2	1984

[No. CMD/13 : 11]

A.K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 29 मई, 2007

का. आ. 1594.– भारतीय मानक ब्यूरो (प्रमाणन) विनियम (4) के उपविनिमय (5) के अनुसरण में भारतीय मानक ब्यरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिये गये हैं, वे स्वीकृत कर दिये गए हैं :–

अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा.मा. संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6		7	
1.	9547394	28-08-2006	रामा डेयरी प्रोडक्टस रामापुरम, एटा रोड, अलीगढ़	डेरी व्हाइटनर	12999		1998	
2.	9547596	15-09-2006	चढडा ज्वेलर्स प्रा. लि., तुलस्यानी प्लाजा, 27, एम जी मार्ग, सिविल लाइन्स, इलाहाबाद	स्वर्ण एवं स्वर्ण मिश्रित धातु, आभूषण/आर्टीफैक्टस- फाइननेस एवं मार्किंग	1417			1999
3.	9548804	22-09-2006	अशोका इण्डस्ट्रीज 122/1 सी, सरोजिनी नगर कबाड़ी मार्केट, कानपुर	डीपवेल हैण्डपम्प्स- कम्पोनेन्टस-माइल्ड स्टील	14103			1994
4.	9548905	22-09-2006	अशोका इण्डस्ट्रीज 122/1 सी, सरोजिनी नगर कबाड़ी मार्केट, कानपुर	डीपवेल हैण्डपम्प्स- कम्पोनेन्टस-स्टेनलेस स्टील	14105			1994
5.	9550383	27-09-2006	सुप्रीम इण्डस्ट्रीज एच-1 से एच-5, यूपीएसआईडीसी इण्डस्ट्रियल एरिया, कानपुर	अनप्लास्टीसाइज्ड पीवी सी पाइप्स पोटेबल वाटर सप्लायी हेतु	4985			2000
6.	9550585	26-09-2006	सुप्रीम इण्डस्ट्रीज एच-1 से एच-5, यूपीएसआईडीसी इण्डस्ट्रियल एरिया, कानपुर	अनप्लास्टीसाइज्ड पीवी सी पाइप्स स्वायल वेस्ट डिस्चार्ज सिस्टम इनसाइड बिल्डिंग्स इन्क्लूडिंग वेन्टीलेशन एवं रैन वाटर सिस्टम हेतु	13593/2			1992
7.	9551991	05-10-2006	चढडा ज्वेलर्स प्रा. लि., तुलस्यानी प्लाजा, 27, एम जी मार्ग, सिविल लाइन्स, इलाहाबाद	रजत एवं रजत मिश्रित धातु, आभूषण/आर्टीफैक्टस- फाइननेस एवं मार्किंग	2112			2003

1	2	3	4	5	6	7
8.	9553288	11-10-2006	लक्ष्मनदास ज्वेलर्स 2/209-बी शाप नं. 1 व 2 एम जी मार्ग, आगरा-282 002	स्वर्ण एवं स्वर्ण मिश्रित धातु, आभूषण/आर्टीफैक्टस - फाइननेस एवं मार्किंग	1417	1999
9.	9553692	16-10-2006	सोना चांदी 58/3, बिरहाना रोड, कानपुर-208 001	रजत एवं रजत मिश्रित धातु, आभूषण/आर्टीफैक्टस - फाइननेस एवं मार्किंग	2112	2003
10.	9553793	16-10-2006	सोना चांदी 58/3, बिरहाना रोड, कानपुर-208 001	स्वर्ण एवं स्वर्ण मिश्रित धातु, आभूषण/आर्टीफैक्टस - फाइननेस एवं मार्किंग	1417	1999
11.	9554593	27-09-2006	अतुल जनरेटर्स प्रा. लि. नुनहाई, आगरा	डीपवेल हैण्डपम्प्स-कम्पोनेन्ट्स, कास्ट आयरन कम्पोनेन्ट्स	14101	1994
12.	9554694	09-10-2006	अतुल जनरेटर्स प्रा. लि. नुनहाई, आगरा	डीपवेल हैण्डपम्प्स-कम्पोनेन्टस लेडेड टिन ब्रोन्ज	14102	1992
13.	9556193	26-10-2006	भारत पम्प्स एण्ड कम्प्रेशर्स लि. नैनी, इलाहाबाद	सिलेण्डर फार आन-बोर्ड स्टोरेज आफ कम्प्रेस्ड नेचुरल गैस एज ए फ्यूल फार आटोमोटिव व्हीकल्स	15490	2004
14.	9556395	27-10-2006	काशी ज्वैलर्स 24/44, बिरहाना रोड, कानपुर-208 001	रजत एवं रजत मिश्रित धातु, आभूषण/आर्टीफैक्टस- फाइननेस एवं मार्किंग	2112	2003
15.	9559001	26-10-2006	कृष्णा उद्योग उद्योग नगर, वृन्दावन, मथुरा	पीवीसी इन्सूलेटेड; हैवी ड्यूटी इलेक्ट्रिक केबल्स: पार्ट-1 फार वर्किंग वोल्टेज अपटु एण्ड इन्क्लूडिंग 1100 वोल्ट	11815	1988
16.	9550083	09-11-2006	कौशल मार्केटिंग 130/51-बी, द्वितीय तल, बगाही, टी पी नगर, कानपुर	सिन्थेटिक फूड कलर- प्रिपरेशन्स एण्ड मिक्सचर्स	5346	1994
17.	9562188	21-11-2006	अशोका इण्डस्ट्रीज 122/1 सी, सरोजिनी नगर कबाड़ी मार्केट, कानपुर	डीपवेल हैण्डपम्प्स-कम्पोनेन्ट्स कास्ट आयरन कम्पोनेन्ट्स	14101	1994
18.	9567101	06-12-2006	अतुल जनरेटर्स प्रा. लि. नुनहाई, आगरा	डीपवेल हैण्डपम्प्स-कम्पोनेन्ट्स स्टेनलेस स्ट्रील	14105	1994
19.	9567909	19-12-2006	राधेश्याम राकेश कुमार ज्वैलर्स, रेलवे रोड, अलीगढ़	रजत एवं रजत मिश्रित धातु, आभूषण/आर्टीफैक्टस - फाइनेन्स एवं मार्किंग	2112	2003
20.	9571795	09-12-2006	पी डी साइन्टिफिक सी-46, रोड नं. 12, साइट-5 उद्योग कुंज, पनकी, कानपुर	पैकेज्ड ड्रिन्किंग वाटर (पैकेज्ड मिनरल वाटर के अलावा)	14543	2004
21.	9572191	09-12-2006	जिन्दल एक्सपोर्ट ई-32, के के नगर चौराहा फाउन्डी नगर, आगरा	होरीजेन्टल सेन्टीफ्यूगल पम्प्स फार क्लीयर, कोल्ड वाटर, पार्ट-1 एग्रीकल्चरल एण्ड रूरल वाटर आपूर्ति हेतु	6595	1 2002

1	2	3	4	5	6	7
22.	9573294	20-12-2006	इण्टरमार्केट इलेक्ट्रोप्लेटर्स प्रा.लि. डी-13, साइट-सी, इण्डस्ट्रियल इस्टेट, सिकन्दरा, आगरा	टन्गस्टन फिलामेण्ट जनरल सर्विस लैम्प्स	418	1978
23.	9573904	19-12-2005	हरी पाइप इण्डस्ट्रीज ई-98, साइट-ए, इण्डस्ट्रियल एरिया, मथुरा	अनप्लास्टीसाइज्ड पीवी सी पाइप पोटेबल वाटर सप्लायी हेतु	4985	2000
24.	9576001	07-02-2007	परिवार 119/78, नसीमाबाद, गुमटी नं. 5, कानपुर	रजत एवं रजत मिश्रित धातु, आभूषण/आर्टीफैक्टस- फाइननेस एवं मार्किंग	2112	2003
25.	9576102	07-02-2007	परिवार 119/78, नसीमाबाद, गुमटी नं. 5, कानपुर	स्वर्ण एवं स्वर्ण मिश्रित धातु, आभूषण/आर्टीफैक्टस- फाइननेस एवं मार्किंग	1417	1999
26.	9577710	23-12-2005	कृत्रिम अंग निर्माण निगम जी टी रोड, कानपुर	रिहैबिलियेशन इक्विपमेण्ट व्हीलचेयर्स, फोल्डिंग, जूनियर साइज	8086	1991
27.	9581192	23-12-2005	कानपुर क्वायर प्रोडक्टस जी-26, साइट-1, पनकी इण्डस्ट्रियल एरिया, कानपुर	रबराइज्ड क्वायर शीट्स कुशनिंग हेतु	8391	1987
28.	9584505	15-03-2007	लक्ष्मी ज्वेल्स 1163, ओल्ड कटरा, मनमोहन पार्क, इलाहाबाद	स्वर्ण एवं स्वर्ण मिश्रित धातु, आभूषण/आर्टीफैक्टस फाइननेस एवं मार्किंग	1417	1999

[सं. सी एम डी/13:11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 29th May, 2007

S.O. 1594.—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

SCHEDULE

Sl. No.	Licences No.	Grant Date	Name & Address of the Party	Title of the Standard	IS No.	Part. Sec.	Year
1	2	3	4	5	6		7
1.	9547394	28-08-2006	Rama Dairy Products Rama Puram, Etah Road, Aligarh	Dairy Whitener	12999		1998
2.	9547596	15-09-2006	Chaddha Jewellers Pvt. Ltd. Tulsiani Plaza, 27, M.G. Marg, Civil Lines, Allahabad	Gold and Gold Alloys, Jewellary/Artefacts Fineness and Marking	1417		1999

1	2	3	4	5	6		7
3.	9548804	22-09-2006	Ashoka Industries 122/1 'C', Sarojini Nagar, Kabari Market, Kanpur	Deepwell Handpumps-Components-Mild Steel	14103		1994
4.	9548905	22-09-2006	Ashoka Industries 122/1 'C', Sarojini Nagar, Kabari Market, Kanpur	Deepwell Handpumps-Components-Stainless Steel	14105		1994
5.	9550383	27-09-2006	Supreme Industries H-1 to H-5, UPSIDC Industrial Area, Jainpur, Kanpur Dehat	Unplasticized PVC Pipes for Potable water supplies	4985		2000
6.	9550585	26-09-2006	Supreme Industries H-1 to H-5, UPSIDC Industrial Area	UPVC Pipes for Soil, Waste discharge systems inside buildings including ventilation and rainwater systems	13593	2	1992
7.	9551991	05-10-2006	Chaddha Jewellers Pvt. Ltd. Tulsiani Plaza, 27, M.G. Marg, Civil Lines, Allahabad-211001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
8.	9553288	11-10-2006	Lachmandas Jewellers, 2/209-B, Shop No. 1 & 2, M.G. Road, Opp. Anjana Cinema, Agra-282 002	Gold and Gold Alloys, Jewellary/Artefacts-Fineness and Marking	1417		1999
9.	9553692	16-10-2006	Sona Chandi 58/3, Birhana Road, Kanpur-208 001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
10.	9553792	16-10-2006	Sona Chandi 58/3, Birhana Road, Kanpur-208 001	Gold and Gold Alloys, Jewellary/Artefacts-Fineness and Marking	1417		1999
11.	9554593	27-09-2006	Atul Generators Pvt. Ltd., Nunhai, Agra	Deepwell Handpumps-Components-Cast Iron Components	14101		1994
12.	9554694	09-10-2006	Atul Generators Pvt. Ltd. Nunhai, Agra	Deepwell Handpumps-Components-Leaded Tin brozne	14102		1992
13.	9556193	26-10-2006	Bharat Pumps & Compressors Ltd., Naini, Allahabad	Cylender for On-Board Storage of Compressed Natural Gas as a Fuel for Automotive Vehicles	15490		2004
14.	9556395	27-10-2006	Kashi Jewellers 24/44, Birhana Road, Kanpur-208 001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
15.	9559001	26-10-2006	Krishna Udyog Udyog Nagar, Vrindavan, Mathura	PVC insulated (Heavy duty) electric cables : Part 2 for working voltages upto and including 1100V	11815	1	1988
16.	9550083	09-11-2006	Kaushal Marketing 130/51-B, 2nd Floor, Bagahi, T P Nagar, Kanpur	Synthetic Food Colour-preparations and Mixtures	5346		1994

1	2	3	4	5	6		7
3.	9548804	22-09-2006	Ashoka Industries 122/1 'C', Sarojini Nagar, Kabari Market, Kanpur	Deepwell Handpumps-Components-Mild Steel	14103		1994
4.	9548905	22-09-2006	Ashoka Industries 122/1 'C', Sarojini Nagar, Kabari Market, Kanpur	Deepwell Handpumps-Components-Stainless Steel	14105		1994
5.	9550383	27-09-2006	Supreme Industries H-1 to H-5, UPSIDC Industrial Area, Jainpur, Kanpur Dehat	Unplasticized PVC Pipes for Potable water supplies	4985		2000
6.	9550585	26-09-2006	Supreme Industries H-1 to H-5, UPSIDC Industrial Area	UPVC Pipes for Soil, Waste discharge systems inside buildings including ventilation and rainwater systems	13593	2	1992
7.	9551991	05-10-2006	Chaddha Jewellers Pvt. Ltd. Tulsiani Plaza, 27, M.G. Marg, Civil Lines, Allahabad-211001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
8.	9553288	11-10-2006	Lachmandas Jewellers, 2/209-B, Shop No. 1 & 2, M.G. Road, Opp. Anjana Cinema, Agra-282 002	Gold and Gold Alloys, Jewellary/Artefacts-Fineness and Marking	1417		1999
9.	9553692	16-10-2006	Sona Chandi 58/3, Birhana Road, Kanpur-208 001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
10.	9553792	16-10-2006	Sona Chandi 58/3, Birhana Road, Kanpur-208 001	Gold and Gold Alloys, Jewellary/Artefacts-Fineness and Marking	1417		1999
11.	9554593	27-09-2006	Atul Generators Pvt. Ltd., Nunhai, Agra	Deepwell Handpumps-Components-Cast Iron Components	14101		1994
12.	9554694	09-10-2006	Atul Generators Pvt. Ltd. Nunhai, Agra	Deepwell Handpumps-Components-Leaded Tin brozne	14102		1992
13.	9556193	26-10-2006	Bharat Pumps & Compressors Ltd., Naini, Allahabad	Cylender for On-Board Storage of Compressed Natural Gas as a Fuel for Automotive Vehicles	15490		2004
14.	9556395	27-10-2006	Kashi Jewellers 24/44, Birhana Road, Kanpur-208 001	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112		2003
15.	9559001	26-10-2006	Krishna Udyog Udyog Nagar, Vrindavan, Mathura	PVC insulated (Heavy duty) electric cables : Part 2 for working voltages upto and including 1100V	11815	1	1988
16.	9550083	09-11-2006	Kaushal Marketing 130/51-B, 2nd Floor, Bagahi, T P Nagar, Kanpur	Synthetic Food Colour-preparations and Mixtures	5346		1994

1	2	3	4	5	6	7
17.	9562188	21-11-2006	Ashoka Industries 122/1 'C', Sarojini Nagar, Kabari Market, Kanpur	Deepwell Handpumps, Components-Cast Iron	14101	1994
18.	9567101	06-12-2006	Atul Generators Pvt. Ltd., Nunhai, Agra	Deepwell Handpumps-Components Stainless Steel	14105	1994
19.	9567909	19-12-2006	Radhe Shyam, Rakesh Kumar Jewellers Railway Road, Aligarh	Silver and Silver Alloys, Jewellery/Artefacts-Fineness and Marking	2112	2003
20.	9571795	09-12-2005	P D Scientific C-46, Road No. 12, Site-V, Udyog Kunj, Panki, Kanpur	Packaged Drinking Water (other than Packaged Natural Mineral Water)	14543	2004
21.	9572191	09-12-2005	Jindal Export E-32, K K Nagar Crossing Foundry Nagar, Agra	Horizontal Centrifugal Pumps for Clear, Cold Water, part-1: Agricultural and Rural Water Supply Purposes	6595 1	2002
22.	9573294	20-12-2005	Intermarket Electroplaters (P) Ltd. D-13, Site-C, Industrial Estate, Sikandara, Agra	Tungsten Filament General Service Electric Lamps	418	1978
23.	9573904	19-12-2005	Hari Pipe Industries E-98, Site-A, Industrial Area, Mathura	Unplasticized PVC Pipes for Potable Water Supplies	4985	2000
24.	9576001	07-2-2007	Pariwar 119/78, Naseemabad, Gumti No. 5, Kanpur	Silver and Silver Alloys, Jewellary/Artefacts-Fineness and Marking	2112	2003
25.	9576102	07-02-2007	Pariwar 119/78, Naseemabad, Gumti No. 5, Kanpur	Gold and Gold Alloys, Jewellary/Artfacts-Fineness and Marking	1417	1999
26.	9577710	23-12-2005	Artificial Limbs Manufacturing Corporation of India, G.T. Road, Kanpur	Rehabilitation eqiupment-Wheelchairs, Folding, Junior Size	8086	1991
27.	9581192	23-12-2005	Kanpur Coir Products (P) Ltd., G-26, Site-1, Panki Industrial Area Kanpur-208 022	Rubberized Coir Sheets for Cushioning	8391	1987
28.	9584505	15-03-2007	Laxmi Jewels 1163, Old Katra, Manmohan Park, Allahabad	Gold and Gold Alloys, Jewellery	1417	1999

[No. CMD/13:11]

A. K. TALWAR, Dy. Director General (Marks)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 3 मई, 2007

का.आ. 1595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. आई. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कोलकाता के पंचाट (संदर्भ संख्या 30/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-05-2007 को प्राप्त हुआ था।

[सं. एल-22012/234/1997-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 3rd May, 2007

S.O. 1595. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 30/1998) of the Central Government Industrial Tribunal/Labour Court, Kolkata as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of C.I.L. and their workmen, which was received by the Central Government on 03-05-2007.

[No. L-22012/234/1997-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 30 of 1998

Parties : Employers in relation to the management of C. I. L., Dankuni Coal Complex

AND

Their workmen.

Present : Mr. Justice C.P. Mishra, Presiding Officer

Appearance :

On behalf of the Management	:	Mr. A. Banerjee, Advocate with Mr. S. Mukherjee, Advocate.
On behalf of the Workmen :		Mr. R.N. Paul, Advocate.
State : West Bengal	:	Industry : Coal.

Dated, the 24th April, 2007

AWARD

By Order No. L-22012/234/97/IR(CM-II) dated 22-07-1998 the Central Government in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :—

> "Whether the action of the management of Dankuni Coal Complex of Coal India Ltd. in not ensuring minimum rates of wages as per NCWA IV & V to the contract workers working in Dankuni Coal Complex is justified? If not, to what relief are the workmen entitled?"

2. This reference has been made at the instance of Coal India Employees' Union (AITUC), 10 N.S. Road, Kolkata-700001 hereinafter to be referred as the union. The case of the union, in short is that Dankuni Coal Complex hereinafter to be referred as DCC for short is a Government of India Enterprise under the administrative control of the Ministry of Coal and is a direct unit of Coal India Ltd. It has a factory at Dankuni in the District of Hooghly where various types of coal manufacturing process are done along with various types of bye-products are manufactured. There is around 700 regular employees and in addition to that about 295 daily rated workmen are hired to man the continuous process of the plant under so called contractors. These workmen are working in the DCC for the last 10 years and they perform same work as had been done by the regular employees and the services rendered and duties performed by these workmen are of permanent and perennial in nature and as such they have the right to enjoy benefits, facilities, terms and conditions of service which are being enjoyed by the regular employees of DCC. But the management indulged in unfair labour practice and denied the minimum wages and other benefits as available to the regular employees to these 295 workmen. At the request of these workmen the union to took up their cause and demanded minimum rate of daily wages of Category-I with all benefits as per Coal India Ltd. rules and practice in terms of National Coal Wage Award–V from the management of DCC. It is stated that the management of DCC pays Rs. 61.20 to each of the aforesaid workmen through their agents so called contractors as minimum daily rate of wages, although the said so called contractors are receiving Rs. 90/- to 95/- per day per workman whereas the daily rate of wages as per memorandum of agreement dated 01-07-1991 was Rs. 82.27 at the relevant time. In the circumstance the union prays that the management of DCC be directed to pay these workmen @ Rs. 82.27 per day as per National Coal Wage Agreement—V and also to pay them the minimum daily rate of wages in future as per National Coal Wage Agreement which would be entered between the Company and the union.

3. The management of DCC in its written statement has stated that the reference is not tenable as no dispute has been properly raised by the union with the management. Management has also denied claims and contentions of the union in seriatim. It is stated that contract labour was engaged at Dankuni Coal Complex on job basis which is not permanent and perennial in nature and there is no relationship of employer and employee between DCC and the concerned workman of the contractors. The case of the management is that National Coal Wage Agreement—IV was entered on 27th July, 1989 and the same was for the period from 1st January, 1987 to 30th June, 1991 and it was

applicable in case of the employees of Coal industries and not applicable to any employee of the contractor. The memorandum of settlement entered on 15th June, 1995 between Dankuni Coal Complex Contractors' Association and their workmen and another agreement entered into between the contractor and their employees on 4th November, 1998 which provide for the rates of wages of the contractors, labourers and it will appear from the same that the contractors are paying more wages than that of the minimum wages. It is stated that engagement of contract labour in DCC has not been abolished under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 by the appropriate authority, the present reference is not maintainable. Management specifically denied that those workmen are working in DCC for the last 10 years or have performed the same work as had been done by the regular employees of the DCC as alleged. It is also denied that all the 295 workers working under the arrangement of the Company through the contractor come under the Category-I (unskilled) as per the book on nomenclature, job description and categorisation of coal employees as alleged. It is stated that the management of DCC at all material point of time had acted fairly, reasonably and in accordance with law and none of the acts of the management can be termed as arbitrary or unfair labour practice as alleged. Management accordingly prayed for holding that the reference is not maintainable and the workmen are not entitled to any relief.

4. Five witnesses have been examined on behalf of the workmen. WW-1 Krishanu Chanda is a Time-keeper in DCC and WW-5 Nirmal Krishna Dey is working in DCC as Yard Master. WW-2 Shyamapada Paul and Bharat Dhali WW-3 are two of the concerned contractor's workers. WW-4 Debabrata Roy works at the Head Quarters of Coal India Ltd. In the Telecommunication Department and he is the General Secretary of the union. All these witnesses on behalf of the workmen have stated in one voice that there are about 600 permanent employees in DCC and about 295 work through contractors. These 295 workers are not permanent employees but they do the perennial nature of work. According to these witnesses these workmen are entitled to the similar wages as the regular employees of DCC are getting. It is however been admitted by WW-1 that National Coal Wage Agreement is applicable to the permanent employees in the coal industry and the payment made by the management is only through contractors and not directly.

5. On behalf of the management only one witness has been examined MW-1, S.B. Das Mahapatra the Personnel Manager of DCC. He has stated that the management appoints contractors for performing works in the DCC on the basis of job requirement and the job required to be done by the said contractors are not of perennial nature. He has also stated that these workmen have been appointed through contractors by making advertisement and tenders on the basis of job requirement whereas day-to-day work is done by the permanent employees of the Company. He has categorically stated that the National Coal Wage Agreements are applicable only to the permanent employees of the Company. He has also deposed that agreement between the contractors and their workers controls the payment of wages to the contractors' workers. According to him the minimum wages fixed by the State Government is at higher level than that of the Central Government and the payments required to be made to the labourers by the contractors is a little more than the minimum wages fixed by the State Government. In cross-examination the witness has stated that registration is required for a contractor engaging more than 19 labourers and the management has such registration. He has stated that there is no unskilled labour in the regular cadre in the Company and the labourers engaged by the contractors are all unskilled labourers. He could not say if these workmen are working continuously and regularly because according to him they are not regular workers. Cross-examination of this witness remained inconclusive as the union preferred not to appear on several dates and the witness had to be discharged without complete cross-examination.

6. Out of the documents exhibited on behalf of the workmen Ext. W-1 is union's letter dated 19-04-1995 to the General Manager, DCC. Ext. W-2 is a letter of the union dated 15-05-1995 to the RLC (C), Kolkata. Ext. W-3 is some portion of Chapter XI of a Book. Ext. W-4 is another letter of the union dated 12-06-1995 to the ALC (C), Kolkata. Ext. W-5 is a letter of the ALC (C), Kolkata dated 28-06-1995 to the General Manager, DCC. Ext. W-6 is a letter of the union dated 25-07-1995 to the ALC (C), Kolkata. Ext. W-7 is a letter of the union dated 07-08-1995 to the ALC (C), Kolkata Ext. W-8 is a circular letter of the Chief of Personnel, Eastern Coalfields Ltd. Ext. W-9 minutes of the meeting dated 04-08-1995. held between the management and the workmen. Ext. W-10 is another minutes of the meeting dated 21-8-1995. Ext. W-11 is a letter dated 14-9-1995 of the ALC (C), Kolkata to the General Manager, DCC Ext. W-12 is a letter of the union dated 14-9-1995 to the ALC (C), Kolkata. Ext. W-13 is a letter of the ALC (C), Kolkata dated 16-2-1996 to the Chairman, Coal India Ltd. and others. Ext. W-14 is a letter of ALC (C), Kolkata dated 26-6-1997 to the Secretary to the Govt. of India. Ext. W-15 is the details of contractual engagement in various departments of DCC. On the other hand management has also exhibited certain documents. Ext. M-1 an article of agreement. Ext. M-2 is a work order dated 6-3-1998 of the South Eastern Coalifieds Ltd. in favour of M/s. Pinki Enterprise. Ext. M-3 is a letter of the Deputy Personnel Manager dated 5-8-1996 alongwith a list to the ALC (C) Kolkata. Ext. M-4 is a memorandum of settlement dated 15-6-1995. Ext. M-5 is a another memorandum of settlement dated 4-11-1998. Ext. M-6 is Notification dated 3-12-1998 under the West Bangal Minimum Wages.

7. On the perusal of the records of this case it is found that nobody is appearing on behalf of the workmen since 29-8-2002 and even the witness of the management was not cross-examined in full inspite of sufficient notice sent to them through registered post and the case was being adjourned from time to time and ultimately it was taken up exparte.

8. Learned Advocate for the management has placed his argument in this regard that the workman is not interested any further to press their claim as they have no case to claim the minimum rate of wages as per NCWA-IV and V which are not applicable to them as they being the contract workers employed by the contractors. It is also submitted that DCC used to appoint the contractors on job basis for execution of small portion of job which is not permanent in nature and there is no relationship of employer and employee between DCC and the concerned workman of the contractors. The regular employees of DCC are standing on the different footing than that of the alleged workmen of the contractors and the Company used to pay to the contractor on the completion of the job. All these 295 workers as such the employees of the contractors on the basis of the agreements dated 15-6-1995 and 4-11-1998 which specifically provided rate of wages payable to them and as per its terms goes the same is higher than the wages specified in the Minimum Wages Act. These workers as such have not legal right against the management to get any such relief for the rate of wages which is applicable to the regular employees of the Company.

9. I have considered the aforesaid facts and the evidence led both on behalf of the workmen and the management in this connection which also goes to show that these 295 workmen admittedly had been employed by the contractors and contractors also made payments of wages to them in this regard. WW-1 Krishanu Chanda has admitted this fact in his evidence when he says that these 295 workers work through contractors. It has also been admitted by him that National Coal Wage Agreement is applicable to the permanent employees in the coal industry and the payment made by the management is only through contractors and not directly. So it has been stated by the other witnesses for the workmen in this regard. MW-1, S. B. Das Mahapatra on the other hand has clearly stated that these workmen have been appointed through contractors by making advertisement and tenders on the basis of job requirement whereas day-to-day work is done by the permanent employees of the Company who are paid accordingly. It is also stated by him that contract is for a particular period and as such there is no question of them being paid wages as per NCWA-IV and V which relate to the regular employees as per provision of Chapter 1, paragraph 1.2 that this agreement shall cover all categories of employees in the Coal Industry who have been covered by National Coal Wage Agreement-I, II, III, IV and V and also employees of those establishments which are functioning and may be functioning under the coal Companies. Management has also filed papers relating to the work order and memorandum of settlement of the year 1995 and 198 vide Exts. M-2 to M-5 which also go to show that these workmen were working under the work order through their contractors and not directly under the Company so as to get any such benefit of minimum rates of wages which was applicable to their regular employees in this regard.

10. In such view of the matter the management of Dankuni Coal Complex of Coal India Ltd. cannot be held to be unjustified in not ensuring minimum rates of wages as per NCWA-IV & V to the contract workers working in Dankuni Coal Complex. The concerned contract workers are not entitled to any relief accordingly.

This is my Award.

Dated Kolkata,
The 24th April, 2007. C. P. MISHRA, Presiding Officer

नई दिल्ली, 3 मई, 2007

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, नई दिल्ली के पंचाट (संदर्भ संख्या 1/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-5-07 को प्राप्त हुआ था।

[सं. एल-30012/54/97-आईआर(सी-I)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 3rd May, 2007

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 1/98) of the Central Government Indusrial Tribunal-I, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 3-5-2007.

[No. L-30012/54/97-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE SHRI SANT SINGH BAL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, NEW DELHI

I. D. No. 1/98

In the matter of dispute between :

Shri Mahavir Singh
S/o Shri Inder Singh,
U-38 Budh Vihar,
Delhi–1100141

...Workman

Versus

M/s Bharat Petroleum Corporation
Ltd., E. C. E. House, Connaught
Circus, New Delhi–110001

...Management

APPEARANCES

Workman in person with his A/R
Shri Anjum Kumar Advocate
Shrik G. D. Maheshwari Advocate A/R
for management

AWARD

The Central Governing in the Ministry of Labour Vide its Order No. L-30012/54/97-IR (Coal-I) dated 19-12-97 Has referred the following industrial dispute to this Tribunal for adjudication :—

> "Whether the action of the management of Bharat Petroleum Corporation Ltd., in Dismissing the services of Shri Mahabir Singh, Watchman w.e.f. 29-7-1995 is legal and justified? If not, to what relief is the said workman entitled?"

2. Brief facts of this case as culled from record are that petitioner Shri Mahabir Singh claimed that he had been working with the management M/s Bharat Petroleum Corporation as Security Guard (Watchman II) w.e.f 21-7-81 and reclassified as Security Guard (Watchman-I) w.e.f. 1-7-89. He was alleged to have committed theft on 17-9-92 between 6 AM to 2 PM during the shift when he was on duty. He was seen carrying three tins of lubri oils near the transformer room by one Santosh Anney Operation Officer and on his questioning he asked to pardon him but refused to give any written apology. He was produced before Shri P. V. Kumar ISM Officer Shakurbasti. He on 19-9-92 in presence of Surender Singh, Deputy Manager made enquiries from him, At that time also he again prayed for pardon but he refused to give in writing. The cans filled up with lubri oil were kept in safe custody. Thereafter the workman was given show cause notice dated 17-11-92 and he furnished his explanation dated 27-11-92 and on consideration of the explanation an enquiry was ordered to be initiated on 29-3-93 which was concluded on 17-6-93 and he was found guilty of misconduct of committing theft of three cans of lubri oil from the installation and the Enquiry Officer recommended for dismissal and copy of enquiry report was also sent to the workman. The Disciplinary Authority imposed penalty of dismissal of service upon the workman for misconduct of committing theft of three cans of lubri oil vide order dated 21-7-95 against which the workman filed an appeal which was dismissed by the Appellate Authority. Thereafter the workman raised an Industrial Dispute resulting in the reference in question. The workman filed his claim statement impugning the enquiry proceedings as violative of principles of natural justice, illegal and enquiry report as perverse and biased and during the witnesses recorded in enquiry proceedings as false and having deposed out of animosities due to his participation in Union activities and prayed for his reinstatement setting aside the order of dismissal with all consequential benefits.

3. Claim was contested by filing written statement on behalf of the management admitting joining of service by the workman on 21-7-81 as Security Guard and his posting at Shakurbasti Installation. It is submitted that on 17-9-92 workman was scheduled to be on duty in the morning shift from 0600 hours to 1400 hours. At around 0540 hours on 17-9-92 the workman was seen by Shri Santosh Aney, Operations Officer carrying three cans of lubri oil from a place near the Transformer Room and on his making enquiry the workman admitted his guilt and begged for pardon but refused to give anything in writing. As per rules following the principles of natural justice Enquiry was held and he was found guilty of theft and penalty of dismissal was imposed on him by the Disciplinary Authority as recommended by E. O. and he was dismissed and thus the action of his dismissal is justified as legal.

4. Written statement was followed by rejoinder wherein the controverted facts of the written statement were refuted and those of the claim statement were reiterated to be correct.

5. Management examined Shri Anurag Tripathi Enquiry Officer as MW 1 in support of its case while the workman examined himself as WW 1 to support his case.

6. A/R for the workman contended that the witnesses recorded during enquiry were false., findings of enquiry proceedings were held in contravention of principles of natural justice and enquiry report is perverse, illegal. He also contended that the facts that no FIR of theft was lodged against the workman and that the non examination of witnesses namely S/Shri Ram Kumar, Shri Om, Dhan Singh Chania, Prem Chand, and Harminder mentioned in show cause notice dated 17-11-92 and alleged presence of Anney at 5.40 AM instead of 6 AM as per direction contained in the circular of the management dated 6-9-91 go to show that the enquiry proceedings and report are perverse, illegal, biased and against principles of natural justice.

7. On the contrary A/R for the management Shri G. D. Maheswari refuted the above contentions justifying the enquiry proceedings, report and action of the management in dismissing the workman as legal and proper and in consonance with the principles of natural justice.

8. I have given my thoughtful consideration to the contentions raised on either side and perused the record meticulously.

9. It is a settled law that the Industrial Tribunal is competent to disturb findings/report of domestic enquiry or proceedings only when (1) it comes to the conclusion that the enquiry proceedings have been held in violation of principles of natural justice, (2) that the enquiry proceedings and the report are illegal and (3) that the report is perverse i.e. the view taken by him is contrary to the evidence on record and no person of reasonable prudence can reach the conclusion arrived at by him on the basis of the evidence.

10. The persual of the enquiry report shows that it is based on the testimony of Mr. Santosh Anney, Operation Officer, Shri Surrender Singh and P. V. Kumar, Mr. Anney saw the workman taking cans of lubri oil while one can was placed under the sintex tank. Thus he witnessed him committing the act of theft of lubri oil and the workman asked him to pardon him. He the workman also begged pardon before Shri P. V. Kumar on 19-9-92 before Surender Singh, Deputy Manager as mentioned above and the Enquiry Officer found their testimony sufficient to prove the charge of misconduct of committing theft of lubri oil against the workman and he did not consider the testimony of workman defence witnesses namely Naresh and Ram Kumar as inspiring confidence in him that Mr. Anney cannot be present at 5.40 AM on the day when the alleged act of theft of three cans of lubri oil was committed, on registration of FIR and non examination of the witnesses namely Dhania etc. mentioned in the show cause notice as stated above and the direction in the circular dated 6-9-91 that employees whose duty commence on 6AM may enter the installation after 5.50 AM only being directive in nature and Mr. Anney noted his presence in the register at 5.45 AM also do not in my view in any way disprove the findings of the enquiry report. The workman admittedly participated during enquiry proceedings and cross examined the witnesses at length go to show that the enquiry proceedings were conducted in accordance with principles of natural justice. The findings of enquiry officer, and penalty of dismissal imposed by the Disciplinary Authority have been given after the consideration and following principles of natural justice and punishment of dismissal afforded to him cannot be described as shockingly disproportionate to the misconduct committed by him. The enquiry proceedings, findings, report and the action taken thereon are not perverse, against principles of natural justice, and do not suffer from any illegality. The action of the management in dismissing the services of the workman w.e.f. 29-7-95 is legal and justified. The reference is answered accordingly and Award is thus made. File be consigned to record room.

Dated 24-4-07 SANT SINGH BAL, Presiding Officer

नई दिल्ली, 3 मई, 2007

का.आ. 1597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉर्पोरेशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 194/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-5-07 को प्राप्त हुआ था ।

[सं. जैड-20025/12/96-आईआर(सी-I)]
स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 3rd May, 2007

S.O. 1597. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 194/96) of the Central Government Industrial, Tribunal Jabalpur now as shown in the Annexure in Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 3-5-2007.

[No. Z-20025/12/96-IR (C-I)]
SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/194/96

Presiding Officer,. Shir C. M. Singh

Shri Chhagan S/o Teju,
R/o 147, Khatik Mohalla,
badi Gwal Toli,
Indore Workman/Union

Versus

Sr. Regional Manager,
M/s B.P.C.L., C-2 B,
DA Colony, Link Road,
No. 3, Shivaji Nagar, Bhopal. Management

AWARD

Passed on this 12th day of April, 2007

1. The Government of India, Ministry of Labour vide its Notification No-Z-20025/12/96-IR(C-I) dated 14th October, 1996 has referred the following dispute for adjudication by this tribunal :—

> "Whether the demand for reinstatement by Sh. Chhagan S/o Teju, Ex. Watchman w.e.f. 1-7-1986 on the plea that his services were illegally terminated by the management of Bharat Petroleum Corporation Limited, Bhopal is legal and justified? If so, to what relief is the workman entitled?"

2. The case of workman Shri Chhagan in brief is as follows. That he was appointed as watchman, Staff Quarters at Indore with the management. He was so employed with the management from the past 6 years. His services were terminated without giving any show-cause notice to him. According to allegations of the management, the services of workman were terminated for remaining under intoxication on duty, remaining unauthorisely absent from duty, misconduct and creating fear amongst the residents of that place. It has been averred by the workman in his statement of claim that he did not commit any irregularity, he never had been under the influence of any intoxicant and his services were terminated illegally. The workman has prayed that he be reinstated with all back wages and benefits.

3. Order dated 5-4-06 on orde sheet of this reference reveals that inspite of sufficient service of notice on the management, nobody put in appearance on behalf of management and therefore the reference proceeded exparte against the management.

4. The workman in order to prove his case filed his affidavit and affidavit of Shri Raju.

5. As the case proceeded ex parte against the management, no evidence is on record for proving the case of the management.

6. I have heard Shri S.K. Ojha, advocate the learned counsel for the workman. I have very carefully gone through the evidence on record.

7. The case of the workman is fully established and proved from the uncontroverted and unchallenged affidavits of workman Shri Chhagan and his witness Shri Raju. Against the above evidence, there is no evidence of the management on record. The reference is therefore liable to be answered in favour of the workman and against the management with costs.

8. In view of the above, it is hereby held that the demand for reinstatement by Shri Chhagan, S/oTeju, Ex-watchman w.e.f. 1-7-86 on the plea that his services were illegally terminated by the management of Bharat Petroleum Corporation Ltd., Bhopal is legal and justified.

9. Now it is to be considered as to whether the workman is entitled to back wages. It is no where averred by the workman in his statement of claim that after termination of his services, hae hs not been gainfully employed and therefore back wages cannot be awarded to the workman. The reference is, therefore, decided as follows.

10. The reference is answered in favour of the workman and against the management with costs and it is hereby held that the demand for reinstatement by Sh. Chhagan S/o Teju, Ex. watchman w.e.f. 1-7-86 on the plea that his services were illegally terminated by the management of Bharat Petroleum Corporation Limited, Bhopal is legal and justified. The workman entitled to be reinstated in service.

11. Copy of the award be sent to the Government of India, Ministrry of Labour as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 3 मई, 2007

का.आ. 1598.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पंचाट (संदर्भ संख्या 73/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-05-07 को प्राप्त हुआ था ।

[सं. एल-22012/122/1995-आईआर(सी-II)]

अजय कुमार गौड़ डेस्क, अधिकारी

New Delhi, the 3rd May, 2007

S.O. 1598. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 73/95) of the Central Government Indusrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of E.C.L. and their workman, which was received by the Central Government on 3-5-2007.

[No. L-22012/122/1995-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Md. Sarfaraz Khan, Presiding Officer.

REFERENCE NO. 73 OF 1995

PARTIES : The Agent, North Searsole Colliery of E.C.L., Burdwan

Vrs.

The Organising Secretary, Colliery Mazdoor Sabha (AITUC), Asansol, Burdwan.

REPRESENTAIVES:

For the Management : Sri P.K. Das, Advocate

For the Union (Workman) : Sri N. Ganguly, Advocate.

INDUSTRY : Coal. : STATE : West Bengal

Dated the 4-4-2007

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Minister of Labour *vide* its letter No. L-22012/122/95-IR(CM-II) dated 7-12-1995 has been pleased to refer the following dispute for adjudication by this tribunal.

SCHEDULE

"Whether the action of the management of North Searsole Colliery under Kunustoria Area of E.C.L. in dismissing Sh. Hargobind Lal, Pit clerk from services w.e.f. 2-11-84 on the charge of misconduct *vide* charge sheet No. ECL/NS/P&IR/1742 dated 26-10-83 is legal and justified? If not to what relief the concerned workman is entitled ?"

2. After having received the Order No. L-22012/122/95-IR(CM-II) dated 7-12-95 from the Government of India, Ministry of Labour, New Delhi, for adjudication of the dispute a reference case No. 73 of 1995 was registered on 18-12-95 and accordingly an order to that effect was passed to issue notices to the respective parties through the registered post directing them to apppear in the court on

the date fixed and to file their written statements along with the relevant documents in support of their claims. In pursuance of the said order notices by the registered post were issued to the respective parties. Sri N. Ganguly, advocate for the union and Sri P.K. Das, Advocate for the management appeared in the court and filed their written statement in support of their case.

3. In brief compass the case of the union as setforth in its written statement is that Sri Hargobind Lal was the permanent employee working as pit clerk at North Searsole Colliery, Kunustoria Area of the Eastern Coalfields Limited, Distt. Burdwan.

4. The main case of the union is that the delinquent employee was charge sheeted *vide* Agent's Ref. NO. ECL/NS/PCIR/1742 dated 26-10-93 (Annexure-I) alleging charges two *i.e.* habitual absence without sufficient cause or without leave and continuous absence without permission and without satisfactory cause under clause 17(1)(D), and 17(1)(n) of the standing order applicable to the workman. It was alleged in the aforesaid charge sheet that the workman was absenting himself from the duty since 06-09-88 without information/permission from the competent authority. The workman concerned replied the charge sheet denying the charges *vide* his letter dated 11-11-83 and also requested the management to allow him to resume duty. The workman had stated in his reply that he was sick and was under the treatment of the North Searsole Colliery Dispensary from 6th September to 4th October, 1983. He was declared fit on 4-10-83 and he decided to join duty. But unfortunately he suddenly fell ill and remained under the treatment of Dr. Amlesh Chandra Bagchi from 5-10-83 to 06-11-83 and after being cured he reported for duty on 07-11-83 with medical certificate of sickness and fitness and requested for allowing him to resume his duty but the same was denied by the management and was dismissed vide General Manager, Kunustoria Area Latter No. A. KNT/P & TR/BD/11899 dated 29-10-84/02-11-84.

5. the further case of the union is that the workman concerned was penalized by way of dismissal for the chasrges of his habitual absenteeism from January, 83 though the fact remained that he had already been let off with warning by the Agent *vide* his Reference NO. EC/NS/P & IR/922 dated 30-07-83 and the same should not have been subject matter of charge sheet and dismissal for which the workman had already been punished by way of warning. As regards absenteeism from 6-9-83 as per charge sheet the workman was sick during the period as well be evident from medical certificate of sickness and fitness already submitted (Annexure-2). So it is claimed that there was sufficient cause and reasonable cause of absenteeism for the period from 4-9-83 and onwards which was beyond the control of the workman.

6. It is also the case of the union that no copy of inquiry proceeding was given to him and he has been penalized by an act of victimization for his genuine demand of regularization and payment of difference of wages for working in higher category in the past. The unauthorized absence for a short period on account of sickness is not a gross misconduct which warrent severe punishment of dismissal. The union has sought a relief for reinstatement after setting aside the order of dismissal passed by the management with full back wages.

7. On the other hand the defence case of the management as per the contents of the written statement is that the reference is not maintainable in the eye of law and the dispute is over stale.

8. The main defence case of the management is that the concerned workman is in habit of absenting off and on from his duty without any permission from the authority and for his absence from duty w.e.f. 6-9-83 he was issued charge sheet No. ECL/NS/P&IR/1742 dated 26-10-83 for misconduct specified U/s 17(1)(d) & 17(1)(ii) of Model Standing Order applicable to the establishment. The workman concerned had replied to the charges which were found not satisfactory and accordingly a domestic enquiry was conducted in which the workman concerned had actively participated in the enquiry proceeding and he was given full opportunity to cross-examine the witnesses for the management.

9. The further defence case of the management is that the enquiry officer having found the workman guilty submitted its report to the competent authority who on consideration of the gravity of the misconduct, and other relevant documents dismissed the workman vide its letter No. A. KNT/P&IR/26 D/11899 dated 29-10-82/2-11-84.

10. It is also the case of the management that the present dispute is initiated after a long lapse of 10 years without explaining any thing as to the cause of delay and the award passed holding that the dispute is stale. The copy of the medical certiicate alleged to the issued by M.O. of North Searsole Colliery does not disclose the year it raises a doubt about its authority. Besides this the entire period of sickness is denied by the management as there was nothing which could prevent the workman from getting his treatment w.e.f. 5-10-83 from the M.O. of the said colliery and the workman concerned did not care to inform the management of his said deliberate absence. The workman is claimed to have been frequently absenting from duty without any authority. The management has prayed to declare the order of dismissal of the workman concerned passed by the management as fair, proper and just and the workman is not entitled to get any relief claimed by him.

11. In view of the pleadings of the parties and the materials available on the record I find certain facts which are admitted by the parties. So before entering into the discussion of the merit of the case I would like to mention those facts which are admitted one.

12. It is the admitted fact that Sh. Hargobind Lal was working as Pit Clerk at North Searsole Colliery w.e.f. 3-11-81 of M/s. Eastern Coalfields Limited.

13. It is also the admitted fact that the delinquent employee was absent from his duty since 6-9-83 to 6-11-83 without any leave or prior permission and information to the management.

14. It is further admitted fact that the delinquent workman was charge sheeted on 26-10-83 for habitual absence without sufficient cause or without leave under Section 17(1)(d) and for continuous absence without permission and without satisfactory cause for more than 10 days under Section 17(1)(n) of the Standing Order applicable to the establishment.

15. It is also the admitted fact that the workman had received said charge sheet and he had replied the charge sheet.

16. It is also directly or indirctly admitted by the union that the enquiry proceeding was conduct by the enquiry officer appointed by the management. It is also admitted fact that he was penalized earlier for two charges of habitual absence from Jan, 83 and he had already been let off with warning by the Agent dated 30-7-83. It is the settled principle of law that the facts admitted need not be proved. Since these all aforesaid facts are admitted one, so I do not thing proper to discuss the same in detail.

17. From the perusal of the order sheets of the record it transpires that on 23-12-97 a hearing on the preliminary point was made and the validity and fairness of the enquiry proceeding was held by my predecessor to be valid as the same was not challenged by the Learned lawyer of the union.

18. From the side of the management a plea has been taken in para 2 & 3 of its written statement that the instant reference is bad in the eye of law as the same is not legally maintainable. But the aforesaid issue was neither raised nor pressed by the side of management during the course of final hearing of the case. The management has neither examined any oral witness nor tendered any documents in this regard. As such I do not find any defect in the maintainability of this reference and the facts of this case very well come under the purview of the Industrial Disputes Act, 1947. The Government of India through the Ministry of Labour has rightly referred the dispute to this Tribunal for its adjudication and as such this issue is decided against the management.

19. On perusal of the record it transpires that none of the parties has examined any oral witness in support of their case rather they have filed some Xerox copies of the documents in support of their respective claims The management has filed Xerox copy of the charge sheet dated 26-10-83. Reply of the charge sheet by the workman concerned, enquiry notice dated 16-11-83, warning letter dated 16-9-82, warning letter dated 30-7-83, warning letter dated 1-3-83, warning letter dated 18-12-82, enquiry proceeding along with its report and letter of dismissal dated 29-10-84/2-11-84 in support of its case.

20. On the other hand the union has filed the Xerox copies of certificate of sickness issued by the Medical Officer, North Searsole Colliery dated 5-10, medical certificate dated 7-11-83, charge sheet dated 26-10-83, reply of the workman dated 11-11-83, dismissal letter dated 29-10-84, appeal of the workman to the General Manager, Kunustoria Area dated 29-12-94, two letters of the union dated 12-1-87 & 22-3-90 addressed to the General Manager, record notes of minutes dated 4-12-91, A/B minutes of J.C.C. dated 18-6-92 and 25-6-92 (10A & 10B), letter of union dated 11-4-94 to the Director Personnel, ECL(A.B) and representation before Assistant Labour Commissioner (C) dated 31-8-84 in support of its claim.

21. The documents filed on behalf of the management are official letters issued by the competent authority. These documents are admitted one as the correctness of the contents of the said documents and their genuineness has not been challenged by the union either in course of hearing or in its written statement. On the contrary the management has challenged the authenticity of the medical certificate issued to the workman concerned as it is claimed that no such certificate was ever issued by the M.O. of North Searsole Colliery and the entire period of sickness is denied by the management.

22. From the perusal of the record it transpires that the delinquent employee was charge sheeted for committing the misconduct of habitual absenteeism without sufficient cause and without leave under Section 17(1)(d) and for continuous absence without permission or without satisfactory cause for more than 10 days under section 17(1)n of the Model Standing Order applicable to the establishment. The contents of the charges were read "v" and explained to the employee concerned in hand to which he pleaded not guilty and claimed to contest the reference. The workman concerned has submitted his explanation to the charges levelled against him. The explanation submitted by him in respect of the charges are vague and has not explained the specific reason for his absence from duty during the period w.e.f. January, 1983 to October, 1983. Simply he has claimed that he had given information to the Medical Officer of this company who had issued a sick certificate for his treatment w.e.f. 6-9-83 to 4-10-83. This certificate of sickness has been claimed by the management to be doubtful as it does not indicate the year of the sickness, no disease has been mentioned. Moreover it has not been properly proved. The relevant indoor register maintained in the office has not been called for by the union. Simply filing the Xerox copy of the certificate of sickness will not be sufficient to prove the same in the eye of law. It must have been proved by cogent evidence. No witness has come forward to say that during the relevant period the workman concerned was under the treatment of the colliery doctor. Besides this no Xerox copy of the prescription or treatment paper or Medical bills have been filed in this regard.

23. Having gone through the entire facts circumstance, enquiry proceedings along with the findings of the enquiry officer I find that the delinquent employee was admittedly absent from his duty w.e.f. 6-9-83 to 26-10-83 and even thereafter he remained absent till 11-11-83 continuously without any prior permission and information to the management. The total attendance during January, 83 to October, 83 is only 54 days which has been the proof of his nature of habitual absence. The enquiry officer has rightly held him guilty for an unauthorized absence and habitual absenteeism and accordingly in the light of the said prevailing facts the concerned workman deserves some suitable punishment for the said alleged proved misconduct as per the provision prescribed in the Model Standing Order applicable to the establishment.

24. Now the main point in issue for consideration before the court is to see as to how far the punishment of dismissal awarded to the delinquent employee by the management is just, proper and proportionate to the alleged nature of misconduct proved.

25. Heard the learned lawyer of both the parties on the said point in issue in detail. It was submitted by the learned lawyer of the workman concerned that it is a simple case of an unauthorized absence for a short period which has been duly explained. The certificate of sickness and medical certificate of a private doctor has been filed to show the circumstance for his absence during the relevant period.

26. It was further submitted that the delinquent workman has got unblemish record during his service tenure. During the course of argument the attention of the court was drawn towards the provision of the Model Standing Order where the extreme punishment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty can not be imposed upon the workman in such a minor case of alleged misconduct and at best the penalty of stoppage of two increments with cumulative effect can be awarded.

27. It was lastly argued that the Apex court has observed that justice must be tempered with mercy and the delinquent workman should be given opportunity to reform himself and to be loyal and disciplinary employee of the management. The punishment of dismissal has been claimed to be too harsh a punishment which is totally disproportionate to the alleged misconduct.

28. On the other hand the learned lawyer for the management submitted that the findings of the enquiry officer are based on sufficient materials and documents including the evidence adduced by various witnesses and the charges levelled against the workman have been well proved before the enquiry officer.

29. It was further argued by the management lawyer that it is not a simple case of unauthorized absence without any leave or prior permission and information to the management rather there is also the charge of habitual absence. The abstract of attendance of the workman for the year 1983 go to show that his total attendance during January,83 to October,83 is 54 days which clearly proves his nature of habitual absence. The attention of the court was drawn towards the four letters of warnings issued to the workman concerned by the management on account of his unauthorized absence on different dates and all the time he was let off with strict warning to mend himself but to no effect. He had even given the undertaking to the management to rectify his defects but he went on repeating his defects without caring even the last warning letter. So such type of misconduct can't be said to be minor rather it comes under the category of gross misconduct and the punishment of dismissal awarded to him is just, proper and proportionate to the alleged misconduct proved.

30. Perused the enquiry proceeding along with the findings of the enquiry officer. It is clear that the workman concerned had appeared and actively participated in the said enquiry proceeding and all the sufficient opportunity was given to him to defend himself. He had engaged a co-worker to cross examine the witness of the management side. The explanation to the charges submitted by the workman is also evading, vague and not sufficient. It is clear from the enquiry proceeding and the statement of the witnesses that the workman had claimed to be absent on the relevant different dates either on verbal information to the competent authority or due to his sickness, or suffering family member due to prox or other compelling circumstance. But nobody came to his rescue to say that he had given verbal information to the competent authority and in spite of giving opportunity no medical certificate were produced by him before the enquiry officer. It is also clear from the proceeding that some time he went on leave but did not rejoin in time to resume his duty and overstaying without any information to the management and no medical certificate was produced to show the compelling circumstance. The management has also filed the copies of warning letters dated 16-9-82, 18-12-82, 1-3-83 and the last warning letter dated 30-7-83. These letters for unauthorized absence from duty w.e.f. 1-7-82 to 15-9-82 and was allowed to resume his duty from 16-9-82 on the basis of written undertaking. Last warning dated 30-7-83 for habitual absent from duty without information/permission from the authority with the warning that the recurrence of similar offence in future will be dealt with very seriously. Another warning letter dated 1-3-83 for unauthorized absence w.e.f. 20-1-83 to 1-3-83, warning letter dated 18-12-82 for overstay as he was granted leave from 25-10-82 to 29-10-82 but he did not report his duties after expiry of the leave and was allowed to resume his duties from 20-12-82. These all warning letters go to show that the workman was given ample opportunity to rectify his defects but his repeated failure proves that he was not at all interested to improve and rectify himself. Besides this according

to abstract of attendance of the workman concerned his attendance is :

January, 1983.	11 days
February, 1983	Nil
March, 1983	2 days
April, 1983	6 days
May, 1983	Nil
June, 1983	Nil
July, 1983	3 days
August, 1983	10 days
September, 1983	9 days
October, 1983	Nil
November	Nil
(up to 10-11-1983)	(joined on 11-11-83)

As per records his total attendance during 83 from January to October is claimed to be 54 days only which is claimed to be clear proof of the charges of habitual absenteeism. The Xerox copy of the certificate of sickness said to be granted by the Medical Officer of North Searsole Colliery dated 5.10 to the workman concerned does not indicate the year of granting. It is simply a fitness certificate granted on 5.10 to the workman. Likewise the medical certificate dated 7-11-83 granted by a private practitioner of Raniganj is also simply a fitness certificate to resume the duties. These so called medical certificate relied upon and produced are all certificates which are obtained after he resumed the job to show his fitness. There are no medical certificates which are produced during the course of the period when he was absent to show that he was in fact suffering during that period from any such disease. The subsequent certificate produced by the workman to indicate his fitness can not be a ground or justification for remaining absent for more than sixty days. In that view of the matter the so called justification has no basis whatsoever either on the ground that the leave is authorized or on the ground that he was medically unfit. Accordingly the aforesaid submission of the learned lawyer in respect of the compelling circumstance beyond the control stand rejected.

31. On perusal of the record it transpires that the workman concerned has been habitually remaining absent and he has already been warned in past and several memos were issued. In spite of the same he continued to be an habitual offender by continuously remaining absent. In the aforesaid light of the fact the awarding of penalty of dismissal can not be levelled as disproportionate or shocking the conscience of the court. The punishment prescribed under the Model standing Order itself suggest that the dismissal is the only available punishment after issuing memos and last warnings to the workman.

32. There are several decisions of the Apex Court where in the order of disciplinary authority directing removal or dismissal of an employee on the ground of long absence or overstay has been uphold. In Mithilesh Singh Vs. Union of India and others [2003(97)FLR 122 S.C.] the appellant, who was constable in Railway Protection Special Force left duty without leave being granted and returned after 25 days and then sought leave. The order of removal from service passed by the authority was set aside by a learned single judge in a writ petition filed by the employee who directed that since punishment other than order of removal or dismissal or compulsory retirement from service may be passed. The Division bench of the High Court restored the order passed by the disciplinary authority and the said judgement was affirmed by the Apex Court in appeal on the ground that the scope of interference with punishment awarded by the disciplinary authority is very limited and unless the punishment is shockingly disproportionate, the court can not interfere with the same and the employee having failed to show any mitigating circumstance in his favour, the punishment awarded by the authority could not be characterized as disproportionate or shocking.

33. Having gone through the entire facts, circumstance, evidence, documents and the discussion made above I am satisfied to hold that the delinquent workman was unauthorisedly absent from his duties for a long period of more than two months continuously without any sanctioned leave, prior permission and information to the management together with committing the offence of habitual absenteeism deliberately without any sufficient reasons and malafide intention. It is further held that the charges of unauthorized absence during the relevant period together with the charges of habitual absenteeism in spite of service of several memos and last warnings issued to him by the management amount to gross misconduct and the punishment of dismissal in the present facts and circumstance of the case can not be said to be disproportionate to the alleged misconduct proved. As such I am not inclined to interfere in the finding of the disciplinary authority of the management in passing the order of punishment of dismissal of the workman concerned and accordingly the punishment of dismissal is maintained and uphold. As such it is hereby.

ORDERED

that let the "Reference" be and the same is dismissed on contest against the union as the delinquent workman is not entitled to get any relief sought for. Send the copies of the award to the Ministry of Labour, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 7 मई, 2007

का. आ. 1599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 256/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-5-2007 को प्राप्त हुआ था।

[सं. एल-22012/51/2000-आई. आर. (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 7th May, 2007

S. O. 1599.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.256/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 7-5-2007.

[No. L-22012/51/2000-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI A. N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/256/2000 Dated : 26/04/2007

Petitioner SHRI RAMLOO MONDI RADHARAPWAR,

Party No. 1 : H.P.C.L. Sub Area, W.C.L. Chandrapur,

Versus

Respondent : SUB AREA MANAGER, Hindushtan Lalpeth

Party No. 2 : Underground, Sub Area, W.C.L. Chandrapur.

AWARD

(Dated : 26th April 2007)

1. The Central Government after satisfying the existence of disputes between Shri Ramloo Mondi Radharapwar, H.P.C.L. Sub Area, W.C.L. Chandrapur Party No. 1 and Sub Area Manager, Hindusthan Lalpeth Undergorund, Sub Area, W.C.L. Chandrapur Party No. 2 referred the same for adjudication to this Tribunal *vide* its Letter No. L-22012/51/2000/IR (CM-II) Dtd. 21/08/2000 under clause (d) of sub section (1) and sub section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of the Management namely Sub Area Manager, Hindusthan Lalpeth Underground Sub Area of Western Coalfields Ltd. In demoting Sh. Ramlu Mondi Rudrapawar, Ex-Driver, Hindustan Lalpeth U/G Sub Area of WCL is legal, proper and justified ? If not, to what relief the workman is entitled and from which date ? What other directions are necessary in the matter ?"

3. The petitioner and the management representative have filed a copy of settlement which has taken place out of the court. The original is filed on record, which are having signature of representing Union Gen. Mazdoor Sangh, Secretary HMS Union Area Secretary HMS Union for the workman and the representatives of the employer. It is signed by witnesses also. There are no reason to discard the settlement the terms of settlement are as under :—

1. That Shri Ramloo Mondi Rudrapawar will be designated as a Driver in Cat. V w.e.f. 1-10-2004, however, he will be given the wages of Cat. V. of the basic wages of Rs. 205.54 w.e.f. the date of the settlement as accepted by the Hon'ble Tribunal. The period between 1-10-2004 and the date of his assuming as Driver in terms of the Settlement, he will neither be entitled nor he will claim the wages of Cat. V;

2. That he will not be entitled for any financial benefits during the period he has worked as General Mazdoor in Cat. I as a result of his demotion to this post;

3. That Shri Ramloo Mondi Rudrapawar will have no other claim whatsoever, financially or otherwise, for the period of remained demoted to Cat. I. This settlement shall be full and final resolving the dispute pending before the Hon'ble tribunal;

4. That the settlement shall not be treated as precedent for any other case.

5. That both the parties agree to file copies of this settlement before Hon'ble Tribunal with a request to kindly pass a compromise order as per the terms of settlement.

4. In view of the above settlement the award is passed in terms of it and consequently there remain no dispute.

Hence this award.

Dated. 26-4-2007

A. N. YADAV, Presiding Officer

नई दिल्ली, 3 मई, 2007

का. आ. 1600.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नेशनल एड्स रिसर्च इन्स्टीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधि करण, पुणे के पंचाट (संदर्भ संख्या 51/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-5-2007 को प्राप्त हुआ था।

[सं. एल-42012/303/2003-आई. आर. (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 3rd May, 2007

S. O. 1600.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.51/2004) of the Industrial Tribunal Pune (Maharashtra) as shown in the Annexure in the Industrial Dispute between the management of National Aids Research Institute, and their workman, received by the Central Government on 3-5-2007.

[No. L-42012/303/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI S.M. KOLHE, INDUSTRIAL TRIBUNAL, PUNE

Reference (IT) No. 51 of 2004

Between :

National Aids Research Institute
Plot no. 73, MIDC 'C' Block
Bhosari,
Pune-411026. — First party

And

Shri Sanjay Gade
Giaram Chawl,
Mitra Sahkar Nagar
Alandi Road, Dighigaon
Pune — Second Party

In the matter of : Termination of services of Shri Sanjay Gade.

Appearances : Shri Parag Bhosale, for First Party.
Shri G.S. Ogale, for Second Party.

AWARD

(Date : 20-4-2007)

1. Point under reference is in respect of legality and justifiability of the action of first party in terminating the services of the second party.

2. Statement of Claim and Written Statement are filed. Issues are framed. Matter is fixed for hearing.

3. Advocate for second party filed "No instruction purshis" Second party was informed by issuing *suo-mottu* notice that his Advocate filed "No instruction purshis". In spite of service of notice, second party remained absent. Matter is adjourned from time to time.

4. It appears that second party is not interested in proceeding with the matter and in substantiating his demand. Since second party remained absent, demand is not substantiated and proved.

5. In the result, I pass the following Award.

AWARD

Reference is disposed of as second party remained absent and failed to substantiate and prove the demand.

Dated. 20-4-2007

S. M. KOLHE, Industrial Tribunal

नई दिल्ली, 8 मई, 2007

का. आ. 1601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रसार भारती, ब्रॉडकास्टिंग कार्पोरेशन आफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-5-2007 को प्राप्त हुआ था।

[सं. एल-42012/127/2003-आई. आर. (सीएम-II)]
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th May, 2007

S. O. 1601.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.28/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Prasar Bharati Broadcasting Corporation of India, and their workman, received by the Central Government on 8-5-2007.

[No. L-42012/127/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 26th March, 2007

Present : K. JAYARAMAN, Presiding Officer

INDUSTRIAL DISPUTE No. 28/2005

In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Prasar Bharati Broadcasting Corporation of India and their workmen)

BETWEEN:

The General Secretary, Broadcasting Engineering Employees Union — I Party/Claimant

And

The Administrative Officer, Prasar Bharati Broadcasting Corporation of India, Chennai — II Party/Management

APPEARANCES:

For the Claimant : Party in person

For the Management : Mr. P. Raman Kutty, Authorised Representative

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-42012/127/2003-IR(CM-II) dated 27-01-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned in the order of reference is as follows :

> "Whether the claim by the Broadcasting Engineering Employees' Union against the management of Broadcasting Corporation of India, Doordarshan Kendra, Chennai declaring three of the office bearers namely Shri N. Uthandavan, Sr. Engineering Assistant, Shri R. Iyyaswamy, Sr. Engg. Assistant and Shri R. Sukumaran, Engineering Assistant as protected workman is legal and justified? If so, to what relief the union is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 28/2005 and notices were issued to both the parties and both the parties entered appearance and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner Union in the Claim statement are briefly as follows :—

The Prasar Bharati Act, 1990 came into force on 15-9-97 and Prasar Bharati Broadcasting Corporation of India was established on 23-1-97. The employees of all India Radio and Doordarshan were deemed to be on deputation with the Corporation. While so, the Supreme Court has declared AIR & Doordarshan as an "Industry" under Section 2(j) of the I.D. Act, The Petitioner trade union was formed on 5-10-98 and registered under Trade Union Act bearing registration No. 2670/CNI and it was formed for the welfare and general upliftment of conditions of service of employees employed under Corporation. Before that when initiatives were taken by some of the employees of Respondent Corporation to form a trade union, they were subjected to unilateral conditions of service determined by the Corporation by issuing transfer orders and promotional transfer to the active members of the trade union. The General Secretary of the Petitioner union namely Mr. R. Iyyasamy was issued with a promotional transfer order dated 24-4-98 from DDK Chennai to LPT Belgaum on promotion as Assistant Engineer. Similarly, the President of Petitioner union Mr. Uttandavan was also transferred from DDK Chennai to LPT Gangavathy. They have made representation to the corporation to forgo their promotion and retain them in the same post as Senior Engg. Assistants in DDK, Chennai. While it is pending before the Director General, All India Radio, New Delhi, the Corporation relieved them on the basis of surplus posts. But, subsequently, another transfer order dated 10-2-99 was issued to both General Secretary and President of Petitioner union transfering them from Dordarshan Kendra, Chennai to LPT Ranebennur and TVRC, Hosept respectively in the same capacity as Senior Engineering Assistants. Against that order, Mr. Uttandavan had challenged the same before the High Court in W.P. 3512 of 1999 and also obtained an interim relief. The General Secretary namely Sri R. Iyyasamy challanged the two transfer orders dated 24-4-98 and 10-2-99 before Central Administrative Tribunal and Central Administrative Tribunal quashed the order and directed the Corporation to pay the benefits. On that direction, the General Secretary reported to duty on 5-1-2001. But he was not paid salary from 21-11-98 i.e. from the date of relieving him from DDK Chennai to 4-1-2001. In the meantime, against the orders of Central Administrative Tribunal, the Corporation had filed batch of appeals and in a common judgement dated 17-9-2002, the Division Bench of High Court reiterating the right of Corporation of effect transfers allowed the W.P. In the meantime, the Corporation on 30-1-2002 issued another transfer order to General Secretary of the Union transferring him from Chennai to PGF Gulbarga. Again, it was challenged by the General Secretary in W.P. No. 6961 of 2002 on the ground that he is a protected workman and should not be transferred and the same is unfair labour practice. But the said W.P. was

dismissed on 16-7-2003 on the ground of suppression of anterior facts relating to earlier transfer and proceedings. Thus, the Corporation wilfully harassed the office bearers especially the President Mr. Uttandavan and General Secretary Mr. R. Iyyasamy without posting them in DDK Chennai with an intention to suppress the union activities. The Petitioner union had communicated three persons to be recognised as protected workmen under Section 33 of I.D. Act. read with Rule 61 of I.D. (Central) Rules, 1957 to the Corporation, But, in a strange manner, the Corporation neither rejected nor raised any dispute before RLC under Rule 61 of I.D. (Central) Rules, 1957. On 23-6-2000, the Petitioner union raised a dispute before RLC on the ground that transfer of protected workman and non-payment of salary to General Secretary as illegal. But the conciliation ended in failure and the same was referred to adjudication as I.D No. 399/2004 Again on 20-1-2003 the Petitioner union raised an industrial dispute before RLC regarding payment of salary under Section 33 over the issue of protected workman. The same was referred for adjudication in I. D. No. 341/2004. In this case, the Petitioner union has give list of protected workmen to the management in the year 1999 vide letter No. 91/BEEU/HQ/99 dated 24-09-99 and for the year 2001 vide letter No. 51/BEEU/HQ/2001 dated 20-05-01 and for the year 2002 vide letter No. 54/BEEU/HQ/2002 dated 15-05-02 and for the year 2003 vide letter No. 49/BEEU/HQ/2003 dated 10-04-03 and for the year 2004 vide letter No. 45/BEEU/HQ/2004 dated 18-04-2004 and for the year 2005 vide letter No. 36/BEEU/HQ/2005 dated 20-04-2005 as per Section 33 of I.D. Act, 1947 read with rule 61 of I. D. (Central) Rules, 1957. But, as usual, the Respondent/Management has neither communicated nor recognised or raised any dispute before conciliation officer. Hence, the present dispute was raised and due to the failure of conciliation, the matter was referred to this Tribunal for adjudication. Similarly, one Mr. R. Sukumaran, Engineering Assistant has been transferred to Television Relay Centre, Arani on promotion without considering him as a protected workman and forcefully transferred from Chennai by victimisation/unfair labour practice to eliminate him from active union activities. Since the action taken by the Respondent/Management is per se a measure of unfair labour practice falling within Entry S. No. 7 of V Schedule to I.D. Act and since the transfer made by Corporation to the office bearers of the Petitioner union is mala fide, Petitioner Union prays to declare the protected workmen of the union and extend relief/direction to the Corporation.

4. As against this, the Respondent in its Counter Statement alleged that at the out set the Respondent/Management raised preliminary objection on the ground that the alleged office bearers namely Sh. N. Uttandavan, R. Iyyasamy and R. Sukumaran like a number of other employees of Prasar Bharati are not workmen and they are civil servants (Govt. servants) on deemed deputation with Prasar Bharati. The Prasar Bharati is yet to invite option from its eligible employees as to whether they would like to remain Govt. servants or the employees of Prasar Bharati. So long as the option is not invited from them, the employees of Prasar Bharati will continue to be Govt. servants on deemed deputation with Prasa Bharati. Therefore, the Petitioner is not entitled to raise this issue before this forum and they are not workmen as alleged by them and the benefit of protected workmen is available only to workmen and it is not available to civil servants. On that ground, this dispute deserves to be dismissed in limini. Since the employees of Prasar Bharati are Govt. servants and are on deemed deputation of Prasar Bharati they are governed only by FR, SR, CCS(CCA) Rules and they are not covered under Trade Union Act. Any how, the Petitioner union has not communicated about the formation of union to the Respondent/Management. Further, the formation of trade union is not applicable. Even though the judgement of Supreme Court declaring AIR & Doordarshan as Industry, it does not make the individuals being represented by the I party union within the meaning of Trade Union Act. The members of so called union are Govt. employees working for Prasar Bharati on deemed deputation and they do not enjoy any immunity from transfer. Only to avoid the transfer on promotion, they have formed union on 5-10-98 and it is formed with an ulterior motive to protect few persons and to avoid transfer from Chennai. Since S/Sri N. Uttandavan and R. Iyyasamy have not accepted the promotion again they were transferred to other places in the same capacity. The employeer namely General Secretary was relied on his duty on 20-11-98 but he had neither reported for duty at present place nor applied for leave to the Respondent and he was keeping quite in an unauthorised manner for two years refusing to receive all communication sent to his residential address. But on coming to know about the judgement passed in his favour Sri R. Iyyasamy also filed O.A. claiming to be a Govt. servant and not as a protected workman. Though the said O.A. was allowed by Central Administrative Tribunal in the Writ Petition, it was reversed. Thereafter Sri R. Iyyasamy filed another O.A. No. 884/2002 for payment of salary for the absented period from 21-11-98 to 4-1-01. But the Hon'ble Tribunal dismissed the O.A. holding the action taken by the Respondent in not paying salary for the period of unauthorised absen as justified. Even the Division Bench of the High Court upheld the transfer order issued by Respondent/Management in respect of the General Secretary of the alleged union. Though the Petitioner filed W.P. No. 6961/2002 on the ground that he is a protected workman and should not be disturbed suppressing the earlier events that took place since 1998, the High Court in its order dated 16-7-03 dismissed the W.P. filed by the Petitioner. Though the alleged union has produced a list of office bearers as protected workmen, the Respondent/Management has asked list of members of union and it was not furnished by them. Therefore, the allegation with regard to protected workmen is irrelevant and the members of I

Party/Union are not workmen within the meaning of Trade Union Act. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) "Whether the claim of the Petitioner union against the Respondent/Corporation for declaration of three of the office bearers namely Shri N. Uthandavan, Sri R. Iyyasamy and Sri R. Sukumaran as protected workmen is legal and justified?"

(ii) "To what relief the Petitioner Union is entitled?"

Point :

6. In this case, the Petitioner Union claimed that the office bearers namely Sri N. Uthandavan, Sri R. Iyyasamy and Sri R. Sukumaran, Engineering Assistants are protected workmen and the Repondent/Management has to recognise them as such and further they claimed that the order of transfer issued by Respodnent/Management is not valid and the same is illegal.

7. But, as against this the Respondent contended that though the union has alleged that the concerned persons are protected workmen in the previous proceedings before the High Court and also before Central Administrative Tribunal, they have not raised this issue as one of the grounds for attacking the transfer and therefore, the claim of protected workmen made by the Petitioner union with regard to concerned employees is only to oppose the transfer made by the Respondent/Management and hence, it is not valid in law. Further, they contended that Respondent/Management has not recognised the concerned employees as protected workmen and therefore, they cannot claim benefits under Section 33(4) of the I.D. Act.

8. No witness was examined on the side of the Respondent/Management. But on the side of the Petitioner, the present Vice President of the Petitioner union examined herself as WWl and filed 18 documents, which are marked as Ex.Wl to W18.

9. On the side of the Petitioner, it is contended that Prasar Bharati Act came into force from 15-9-1997 and it was established on 23-11-97 and the employees of AIR and Doordarshan were deemed to be on deputation with the Prasar Bharati Corporation. While the Supreme Court declared that All India Radio and Doordarshan as an 'Industry' under Section 2(j) of the I.D. Act, the employees of Respondent Corporation associated themselves to form a trade union and as such the Petitioner trade union was formed on 5-10-98 and registered under Trade Union Act bearing No. 2670/CNI and on 17-11-1998 the Petitioner union informed the Respondent/Management about the formation of the union. Under the original of Ex. W14, one of the concerned employees, Sri Iyyasamy was elected as General Secretary of the Petitioner union. In the mean- time, on 24-4-98 the General Secretary of the Petitioner Union was transferred to LPT Belgaum on promotion as Assistant Engineer. Sri R. Iyyasamy challenged the order of transfer in O.A. No. 1011/2000 and on 6-11-1998 he has given a letter forgoing the promotion and sought to be retained at Chennai. But the Respondent/Management issued an order on the same date i.e. 6-11-98 proposing to relieve him on 20-11-98. On 20-11-98, notwithstanding the fact that Sri Iyyaswamy waive the promotion, the management sought to relieve him on the ground that there are surplus posts in DDK, Chennai. While the matter was pending as such, again Sri R. Iyyaswamy was transferred from DDK, Chennai to LPT, Ranebennur on 10-2-99 which was also challenged in O.A. No.1011/2000 before the Central Administrative Tribunal and the Central Administrative Tribunal on 4-1-2001 has declared that Prasar Bharati Corporation has no power to transfer the employees who are on deemed deputation and staff still continue to be Govt. servants. So, on 5-1-2001, the concerned employee joined at DDK, Chennai. Though the Petitioner union raised the dispute relating to non-payment of salary to Sri R. Iyyaswamy and while the concerned employee was working so, on 14-3-2001 he was transferred to LPT, Ranebennur as Assistant Engineer. But the said order was not given effect to. But, again on 30-1-2002 he was once again issued with order of transfer as Senior Engineering Assistant to Gulbarga and against this, the concerned employee made a representation in February, 2002 and he filed a Writ Petition No. 6961/2002 in March, 2002. In the meantime, while the Respondent has filed a W.P. against the order passed in O: A. No.1011/2000 in W.P. 8502/2001, wherein the High Court has held that Respondent/ Management has got power to transfer the deemed deputationists. After this, the Respondent/ Management issued a relieving order on 8-10-2002 asking Sri R. Iyyaswamy to join at Gulbarga and he was relieved on 10-10-2002. Now, the Petitioner union has raised the industrial dispute for the salary of Sri Iyyaswamy from 11-10-2002 to till date. It is contended for the Petitioner that since the concerned employees are office bearers of the Petitioner union, they are entitled to the benefits of Section 33 (4) and they are protected workmen and it was also informed to the Respondent/Management and therefore, their transfers are not valid.

10. But the Petitioner has not stated for which period, these persons were declared as protected workmen because though they have filed documents Ex. W4 to W8 which are the list of protected workmen by the Petitioner union to the Respondent/Management from the year 2001 to 2004 and only during the year 2004, the Petitioner union has taken up the matter before the labour authorities and obtained an order from labour authorities to the effect to declare the

office bearers of the Petitioner union as protected workmen for the year 2004. Prior to that period, he has not produced any document to show that labour authorities have recognised them or declared them as protected workmen.

11. As against this, on behalf of the Respondent it is contended that though the Petitioner union claimed that concerned employees are General Secretary, President and Treasurer of the Petitioner union, they have suppressed the same and filed Writ Petition before the High Court and also O.A. before Central Administrative Tribunal claiming that they are only Govt. servants and challenged the order of transfer. In Writ Petition No. 8502 of 2001 the High Court has clearly stated that the concerned employee namely alleged General Secretary should have been joined at the place like others and submit his representation, if any, but the concerned employee Sri Iyyaswamy, instead of joining the transferred place has filed another W.P. No. 6961/2002 questioning the transfer claiming to be protected workman but, the High Court in the above Writ Petition dismissed the claim of the Petitioner quoting that successive proceedings of the concerned employee and declared that Petitioner is set in motion only discloses his attempt to avoid transfer by some means or the other. From the conduct of the concerned employee Sri Iyyaswamy, it is clear that he has not accepted his promotion and joined the transferred place and he has claimed to be only a Senior Engineering Assistant instead General Secretary of the Petitioner Union and therefore, the claim of the Petitioner that the concerned employees are protected workmen is without any substance. The Respondent further relied on the rulings reported in AIR 1989 SC 1433 Gujarat Electricity Board Vs. Atmaram Sungopal Poshani, wherein the Supreme Court has held that *"where a public servant is transferred, he must comply with the order, but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer."* In this case, though the Petitioner union alleged so many things, concerned employee has not given any representation for stay or modification on any grounds. Though the concerned employees have filed so many Writ Petitions and O.As before the High Court and Central Administrative Tribunal, they have not at the first instance contended that they are protected workmen and therefore, they are not entitled to be transferred. In this case, though it is alleged that Petitioner union informed the Respondent/ Management with regard to the registration of Petitioner union and also list of members with regard to protected workmen, the Petitioner union has not answered for the query raised by the Respondent/Management and he relied on the rulings reported in 1999 I LLJ 1112 Tamil Nadu Civil Supplies Employees Union Vs. Tamil Nadu Civil Supplies and Other wherein the Madras High Court has held that *"as to the recognition of protected workmen, there must be some positive action on the part of the employer in regard to recognition of employees as protected workmen, before he could claim to be protected workman for the purpose of Section 33. Therefore, the provisions of Section 33 will not be applicable."* Further, In the appeal, in the said case namely, Tamil Nadu Civil Supplies Corporation Employees' Union & Others Vs. Tamil Nadu Civil Supplies Corporation Ltd. and Others, reported in 1999 3 LLJ (Supp) 1060, the Division Bench of the Madras High Court has held that *"no doubt, the employees union gave a list of protected workmen on September 23, 1997, the management in February 23, 1998 asked the union to send fresh list excluding the supervisory cadre. There is nothing on record to show that the management had recognised the list or took some positive action to recognise the list of protected workmen which was to be valid for the calendar year 1998,"* and it rejected the appeal and therefore, before an employee claimed to be a protected workman, he must establish that the management has recognised him as a protected workman. Relying on this judgement, on the side of the Respondent, it is contended that Petitioner's contention that the concerned three employees were the President, General Secretary and Treasurer of the Petitioner union cannot be upheld on the ground that the Respondent/Management has not recognised the list sent by the Petitioner union and the Petitioner union also has not filed any document to show that Respondent has recognized the list sent by the Petitioner Union. Under such circumstances, it cannot be said that concerned employees are protected workmen entitled to the provisions of Section 33 of the I.D. Act. Further, it is argued that even if the Petitioner Union has got any grievance against the Respondent in not recognising the concerned employees as protected workmen, they have to take steps before the labour authorities under Rule 61 (4) of the Industrial Disputes (Central) Rules. Therefore, under no stretch of imagination, it can be said that the concerned employees are protected workmen.

12. I find much force in the contention of the Respondent because Rule 61(4) of Industrial Disputes (Central) Rules states that " when a dispute arises between the employer and any registered trade union in any matter connected with recognition of 'protected workmen' under this Rule the dispute shall be referred to any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final. In this case, the Petitioner union claimed that the concerned employees are protected workmen but, they have not produced any document to show that the Respondent/Management has recognised them as protected workmen. Further, though they have produced document to show Ex. W13 a declaration for protected workmen for the year 2004 by Regional Labour

Commissioner (Central), Chennai, they have not produced any document to show for the previous period the labour authorities have declared them as protected workmen. Further, this reference was made in the year 2003. During the year 2003, though the Petitioner Union alleged that they have sent the list of protected workmen to the Respondent/Management, but they have not produced any document to show the refusal or rejection of the Respondent/Management and whether they have filed any petition before the labour authorities namely Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) to declare them as protected workmen. Under such circumstances, I find they cannot be termed as protected workmen during the relevant period namely 2003. Therefore, I find this point against the Petitioner.

Point No.2:-

The next point to be decided in this case is to what relief the Petitioner union is entitled ?

13. In view of my foregoing findings that the concerned employees are not protected workmen during the relevant period, I find the Petitioner Union is not entitled to any relief as prayed for.

14. Thus, the reference is answered accordingly.

(Dictated to the PA., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th March, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses examined :—

For the I Party/Petitioner : WW1 Smt. K. Mymoona

For the II Party/Management : None

Documents Marked:—

For the I Party/Petitioner :

Ex.No.	Date	Description
W1	05-02-98	Xerox copy of the order or Supreme Court in Civil Appeal No. 2423/89.
W2	24-09-99	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen.
W3	12-05-2000	Xerox copy of the letter from Respondent/Management To RLC, Chennai
W4	20-05-01	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen.
W5	15-05-02	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen.
W6	10-04-03	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen .
W7	24-11-03	Xerox copy of the letter from Petitioner Union to Respondent regarding submission of documents.
W8	18-04-04	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen.
W9	30-11-04	Xerox copy of the letter from Deputy Director of Directorate General, All India Radio to Respondent/Management.
W10	02-06-99	Xerox copy of the certificate of registration of trade union.
W11	22-06-99	Xerox copy of letter from Petitioner Union to Director Respondent/Management.
W12	23-06-2000	Xerox copy of the letter from Petitioner Union to Respondent/Management regarding protected workmen.
W13	16-12-04	Xerox copy of the letter from Assistant Labour Commissioner (Central) to Petitioner Union.
W14	18-11-98	Xerox copy of the letter from Petitioner Union to Chief Executive Officer, BCI, New Delhi regarding Formation of union.
W15	12-02-99	Xerox copy of the letter from Petitioner Union to Chief Executive Officer, BCI, New Delhi & Minister of Information & Broadcasting regarding transfer of office Bearers of union.
W16	30-09-94	Xerox copy of the representation from Petitioner Union to Respondent/ Management regarding victimisation
W17	07-03-03	Xerox copy of the reply given by Respondent before Conciliation proceedings.
W18	01-05-06	Xerox copy of the seniority list of Senior Engg. Assistants as on 1-1-2006.

For the II Party/Managemnt : Nil

नई दिल्ली, 9 मई, 2007

का.आ. 1602.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 343/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-05-07 को प्राप्त हुआ था ।

[सं. एल-11012/69/2003-आईआर(सी-I)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1602. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 343/2004) of the Central Government Indusrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Air India and their workman, which was received by the Central Government on 08-5-2007.

[No. L-11012/69/2003-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 22nd March, 2007

Present : K. Jayaraman, Presiding Officer

Industrial Dispute No. 343/2004

(In the matter of the dispute for adjudicaton under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Air India and their workmen)

BETWEEN

The General Secretary, All India Ex-Servicemen Employees' Union, Chennai	:	I Party/Claimant

AND

The Deputy General Manager (HRD) Air India, Chennai.	II Party/Management

APPEARANCE :

For the Claimant	:	M/s. R. Vaigai & Anna Mathew, Advocates
For the Management	:	M/s. Aiyar & Dolia, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-11012/69/2003/-IR (C-I) dated 26-04-2004 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

"Whether the demand of All India Ex-Servicemen Employees Union for regularisation for the following 9 security guards by the management of Air India is justified? 1. Shri S. Joseph Xavier 2. Shri R.C. Balachandran 3. Shri G. Rajendiran 4. Shri K. Ganesan 5. Shri K. Narasimhan 6. Shri R. Thirunavukkarasu 7. Shri R. Venkatesalu 8. Shri R. Seenivasagan and 9. Shri V. Srinivasan. If so, to what relief are the said workmen entitled and from what date?"

2. After the receipt of the reference, it was taken on file as I.D. No. 343/2004 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner' Union espouses the cause of nine security guards, who joined the services of Respondent/Management on various dates between July, 1997 and January, 1998. The above said nine security guards are ex-servicemen and they have registered their names with the Ex-servicemen Welfare Board at Chennai. Before April, 1997, the Respondent/Management had called for candidates to be sponsored by Directorate of Ex-servicemen Welfare Board, Chennai for recruitment of permanent security guards in Air India and several vacancies were notified and pursuant to which, the said Directorate prepared a panel of eligible candidates and send it to the Air India. On several days, letters were sent by Respondent/Management to workers and in that it is mentioned that the said recruitment is of permanent nature and for the security guards in Air India, Chennai and the candidates were called upon to fill up the enclosed applicaiton form and to submit the same along with its enclosures on or before 30-4-1997 in order to assess their eligibility for the post and thereafter, in July, 1997 they have got initimation from the Respondent/Management. In that they were asked to report for duty immediately with all original certificates and when they reported in person, they were asked to appear before Selection Committee consisting of Senior Manager (HRD), Senior Manager (Security) and Deputy Manager (HRD). After the interview, they were asked to join duty immediately and they are discharging functions on par with the regular security guards. These workers concerned in this dispute are regular employees in armed forces and held the rank upto Havildar and they have got long experience of over 17 to 22 years at the time of retirement from armed forces and hence there could be no exception to their selection. While so, to their shock, the concerned employees were informed that they were provided employment only for 110 days continuously and after a short break they were re-appointed. As such, the concerned employees were re-appointed after a gap of about three

months. When the workers started questioning the Respondent/Management as to why they were not being treated as permanent employees, when the requisition to the Directorate was to make regular recruitment to fill up a permanent vacancy, then only the Respondent issued pre-dated orders to the workers with regard to their position. Though the letters mentioned of July, 1997, it was posted only in November, 1997. Thus, the management has manipulated the same for the purpose of depriving the workers of their legitimate rights. Only in that letters, it is mentioned that they were appointed as security guards purely on temporary basis subject to standing orders of the company. Further, it is stated that the concerned employees cannot claim for permanent apointment or retention beyond the specified period. Thus, the Respondent/Management was indulged in unfair labour practice of stopping the workers deliberately from work, even though the work was continuous and was engaging other similarly retired ex-servicemen from the Directorate, the workmen complained to the Respondent/Management as well as the Directorate of Ex-servicemen Welfare Board. Thereofore, the Ex-servicemen Directorate took exception to this and told the Respondent/Management that it would not sponsor any more candidates and that the Air India should continue to employ them. Then the Respondent/ Management devised another strategy by calling for applications from the Tamil Nadu Ex-servicemen Corporation (TEXCO) and thereafter they have engaged the workmen through the said Corporation on contract basis. This prompted the Petitioners to file the W.P. No. 6727 of 1998 before the High Court of Madras seeking a writ of mandamous directing the Respondent to regularise their service from the date of appointment with all attendant benefits and the High Court passed an interim order of injunction restraining the Respondent from terminating their services. The said Writ Petition was decided in favour of the workers by an order dated 26-10-98. But as against that order, the Respondent filed a Writ Appeal No. 1622/98 which was allowed on 3-3-2003 reversing the order of single Judge. Though the concerned employees filed an appeal before the Supreme Court by Special Leave application, the same was withdrawn to enable them to approach the Industrial Court. The concerned employees are languishing from the year 1997 on a temporary basis receiving a Consolidated monthly pay of Rs. 5450 and they have not get any other benefit given to other permanent security assistants working under the Respondent/Management. The permanent security assistants employed in the Respondent/Management were all sponsored through Ex-servicemen Welfare Board. The said permanent security assistants and workmen concerned in this dispute are discharging the very same functions and they work side by side and shoulder to shoulder and there is absolutely no difference in their duties. Therefore, the Petitioner union raised an industrial dispute before the labour authorities. It is also pertinent to note that these workers were discharging functions on par with the regular security guards and doing sensitive work with utmost sincerity and earnestness. They were interviewed and selected through a selection committee consisting of higher officials of Respondent/Management and after fulfilling the education qualification and medical examination and their appointments were not back door entries. Therefore, the allegation of the Respondent/Management is utterly arbitrary and unjust and the Respondent/Management should not be permitted to employ temporary appointment for the work of perennial and continuous nature and the practice of the Respondent/Management is unfair labour practice as set out under Section 2(ra) read with V schedule Item 10 of the Act. Further, the policy of the Central Govt. not to permit the workers who are not regular employees of Air India in the work of Security Guard and the circular directs the concerned authorities to identify the agencies or Airlines which violated the conditions and warn them in writing to discontinue the illegal activities. Under such circumstances, the Respondent action is illegal and unconstitutional as being arbitrary and discriminatory. For the above reasons, the Petitioner union prays to pass an award holding that the nine workmen concerned who are members of the Petitioner union are entitled to be given permanency with effect from the date of their initial appointment with consequential benefits.

4. As against this, the Respondent in its Counter Statement contended that no doubt, the members of the Petitioner union namely the concerned employees were engaged in the year 1997. Their initial appointment was only for a period of 110 days on temporary basis. On the expiry of the said period, they were re-engaged as temporary security guards and this arrangement was a stopgap arrangement as the need of Respondent/Management for security had increased due to various threats faced by the airlines worldwide and it was made till the Respondent embarked on the recruitment of additional manpower and that the Respondent could not fill up permanent posts due to ban on recruitment imposed by the Government of India. Therefore, the engagement of concerned employees were purely temporary because Air India was handling the security jobs of other airlines, like Malaysian airlines, Singapore airlines, Saudi Arabian airlines etc. and the Respondent has also entered into an agreeement with the said airlines and these are periodical agreement on contract and it may be renewed or terminated at the discretion of authorities of airlines concerned. Further, the Respondent has lost two contracts with Lufthansa and British Airways during April, 2002 and October, 2003 respectivley. Furthermore, Air India is not the sole ground handling agent in Chennai Airport or in any other airport. Indian Airlines and IAAI had security personnel and provide handling services for foreign airlines. Therefore, the concerned employees services have been dispensed with but for the pending litigation and only as per the orders of

High Court, this Respondent continues to maintain status quo. The criteria/standard prescribed for recruitment of these temporary security guards and that of the permanent security guards are at variance as the permanent security guards undergo various tests like physical endurance test, personal interview by a duly constituted selection panel, pre-employment medical examination etc. whereas the concerned employees have not undergone any such tests as prescribed for the permanent security guards. Further, the permanent security guards shoulder higher responsibilities failing which they have to face disciplinary action, whereas the responsibilities entrusted to applicants are much lesser than that of permanent security guards. The Hon'ble High Court in W.P. No. 17159 of 1997 while dismissing the contention of the Petitioner at the admission stage itself, it has held that merely because few of the applicants were ex-servicemen, the same does not put them on a privileged position so as to compel the employer to employ them on permament basis. Even in Writ Appeal, the High Court in W.A. No. 1622 of 1998 have observed that it is open to the Respondent to employ contract labour for the purpose of providing security services. The order of Writ Appeal has become final and on the basis of the observation made in Writ Appeal, the present claim petition is not maintainable and the same has to be rejected on this ground alone. It is not true that the concerned employees were asked to appear before the selection committee as there was no selection made by this Respondent in the case of concerned employees. No doubt, the concerned employees were deployed in certain security functions namely guarding of static posts/building/cargo warehouse booking office, regulating passengers etc. and it is false to allege that they are doing the same work as that of permanent security-men. It is not true to say that they were paid only consolidated wages and they were paid basic pay and allowances prevalent at that point of time for the grade applicable to the security guards even while being on temporary engagement. This Respondent never indulged in unfair labour practice as alleged by the Petitioner. Since this Respondent was not in a position to appoint permanent security guards due to ban on recruitment, it is not possible for this Respondent to regularise the services of concerned employees. Though some of the Petitioners have filed W.P.No. 17159 of 1997 before the High Court which was disposed of by the High Court, but while filing the W.P.No.6726 of 1998 the Petitioners had deliberately suppressed the order in the affidavit filed in support thereof and having suffered an order in W.A.No.1622 of 1998 the claim of Petitioners before this Tribunal on the self same grounds is liable to be rejected on the ground of res judicata. Since the engagement of concerned employees are temporary in nature, they cannot seek all benefits enjoyed by that of permanent guards. Further, since the concerned employees are engaged on temporary basis, they cannot claim revision of wages and consequently earn more over time payment. Further, the Petitioner union has no locus standi to espouse the cause of the Petitioner. The Petitioners cannot claim six years of their engagement. for claiming permanency which as aforesaid was merely fortuitous On the basis of the decision taken by the Human Resources Department, Mumbai, it was felt that there would not be permanent vacancies in the category of security guards in future and it was also clarified by the Respondent to the Assistant Director of Ex-Servicemen Welfare Board that vacancies indicated in notification are purely temporary in nature and hence, the concerned employees cannot claim as a matter of right and as such they are engaged only on temporary basis Quoting the communication from Bureau of Civil Aviation Security is misconceived and devoid of truth The spirit of the circular issued by BCAS is that no private agency should be entrusted with the security related functions at the airports. Only on account of the order of status quo obtained by them, they are allowed to continue as temporary guards, hence the concerned employees cannot rely on the circulars as the same will not in any way improve their position as it stood in the year 1997. Therefore, the action of the Respondent is neither illegal nor unconstitutional as it is not arbitrary or discriminatory, Since the Respondent has been incurring loss during the past two years, as a measure to cut down the staff costs, there is a total ban on recruitment in all categories since 1997 except in categories which are of critical/operational in nature when it is totally unavoidable and posts involving back log of reserved points, Further, the Air India is in process of reorganising the security set up which includes outsourcing of security functions to its subsidiary company and as such offering permanent employment to Petitioners is not possible. Therefore, any requirement has to be met only through the subsidiary Air India Air Transport Service Ltd. Hence, for all these reasons, the Respondent prays to dismiss the claim made by the Petitioner union with costs.

5. Again, in the rejoinder the Petitioner union alleged that it is false to allege that the concerned employees have not done the work as that of regular security assistants. It is also false to allege that the petitioner union has no locus standi to raise this dispute and the allegation is only vague and without any merit. The employees concerned covered in this case are ex-army personnel having served the armed forces for several years and their character and antecedents are impeccable and speak for themselves and the Respondent authorities scrutinized their army records and also asked them to get certificate of verification from the police which they did. Under such circumstances, it is false to allege that they have not gone through the procedures for recruitment. It was only after all the aforesaid procedures were completed and after proper scrutiny the Respondent employed them. Hence, it is most unfair on the part of the Respondent/Management to say that their engagement was purely temporary and they cannot compare themselves with the permanent employees. The

deliberate breaks made by the Respondent/ Management was only in order to deny.them the regular security service, when there was continued need for their work. Hence, the Petitioner union prays that an award may be passed in their favour.

6. In these circumstances, the points for my consideration are —

(i) "Whether the demand of the Petitioner union for regularisation of the nine security guards by the Respondent/Management is justified "?

(ii) "To what relief the concerned workmen are entitled and from what date ?"

Point No. 1 :—

7. In this case, the Petitioner union espouses the cause of nine ex-servicemen employees for regularisation as security guards under the Respondent/Management Though it represented nine persons, it is stated that one Mr.Ganesan has withdrawn his claim from this dispute.

8. Learned counsel for the Petitioner contended that the employees in this dispute are ex-servicemen with long years of service in the army and they were all recruited pursuant to call letters sent by Air India in April, 1997 and 1998. Even in one of the call letters which is marked as Ex.W2, it is clearly stated that the recruitment is for the permanent security guard in the Respondent/Management at Chennai. Further, the call letters clearly mentioned that recruitment was for a clear vacancy and they are recruited after the sponsorship by the Employment Exchange/ Directorate of Ex-Servicemen Welfare Board and they are to be appointed after the assessment of eligibility for the post and after meeting the minimum requirements stipulated for the post. Further, the form of application, which accompanied the call letters also mentions that the recruitment was for permanent security guards under Respondent/Management. Furthermore, the concerned employees were interviewed by the selection committee consisting of Senior Manager (HRD), Senior Manager (Security) and Deputy Manager (HRD) and after the interview and police verification, they were asked to join duty immediately under oral orders. Though no written orders were issued at the time of appointment, order alleged to have been issued to the concerned employees were only on 7-11-1997, after the concerned employees joined duty pursuant to the call letters for permanent appointments and they never told at that time that the appointment was only on a temporary nature. It is also clear that even in the cross examination, the Respondent has not made any attempt to nullify the allegation made by the Petitioner in their Claim Statement with regard to their recruitment. Thus, they were selected only by the Selection Committe as per the procedure laid down by the Respondent/Management. Even in the affidavit filed by the Respondent before the High Court namely under Ex.M9 it has been admitted by the Respondent that the concerned employees were appointed only after fulfilling the requirements regarding height, weight, educational qualification and age. Though, it is alleged that the procedure for endurance test and medical examination was not done, these workers are able bodied ex-army men who have endured arduous conditions and they were appointed only after proper medical certificate. Henee, it is untenable to contend that they were not appointed as per proccdure laid down by the Respondent/Management. Further, from the employment notice issued by Air India in March, 1997 and so on namely under Ex, MI5 to M18, it is clear that 26 clear vacancies were notified for the post of security guards and under the head 'duration' it was stated against the existing vacancies and also for maintaining a wait-list for future requirements, the duration of appointment will be initially for a period of 45 days and likely to be absorbed on permanent basis at a later date.' It was also stated in item 11 in the said notice that they were entitled to 'PF, gratuity, medical assistance and air passage concession as per the rules of Air India' and if their employment was only for 45 days, all these would not have been mentioned. Thus, from the above notification of vacancies, it is clear that the contention of the Respondent that concerned employees were not recruited against the sanctioned vacancies is untenable. Further, the educational and other requirements mentioned for the post namely under Ex.M15 to M18 were annexed with the said communication and one year's experience in army is considered sufficient. Therefore, all the concerned employees fulfilled the requirements mentioned in Ex.M15 to M18 and they have got ten years or more experience in the army. Further, though the Responden/Managemen trelied on Ex, M30 to M32 to say that there is a freeze on recruitment, it is only an after thought and it is unsustainable. Since the documents started from June, 1997 whereas Ex. M15 to M17 which are requisition forms for filling up the posts are dated March, 1997. Moreover, Ex.W15 and W16 namely letters dated 1-12-97 and 9-5-2000 issued by Head Office of the Respondent/ Management to its office at Chennai clearly points out that the employment of ex-servicemen on temporary basis is an untenable position and they should be permanently employed at Chennai after necessary cretion of a regular security force. It is also stated that there is acute shortage of security guards and therefore, reliance of the Respondent on Ex .M30 to M32 regarding the ban on recruitment and abolition of posts is a mere ruse to deny any relief to the concerned employees in this dispute. Furthermore, Ex. M31 clearly states that in case of additional workload justified creation of additional posts, there would be no logic in first abolishing the posts and thereafter processing the proposal for creation of new posts. In fact, Ex.M30 to M32 are only general circulars and leave it to the discretion of each employer to decided, if fresh recruitment is necessary or not. Therefore, when there are clear circulars exist, the denial of permanent status to concerned employees

when they were duly selected after being called for recruitment to permanent posts and despite possessing necessary educational qualification and experience and other requirements for the post is unjust and illegal. No doubt, the standing order of the Respondent/Management under Ex. M22 defines a temporary workmen as a workman engaged for a limited period or for work on temporary nature. In this case, the concerned employees were definitely not engaged for work of a temporary nature nor were they recruited for a limited period as shown by the call letters. The limited period mentioned in the predated appointment orders issued in November, 1997 is only an afterthought in order defeat the proceedings in the High Court filed by the concerned employees. Therefore, in the light of Ex.W14 to W15 letters sent by the Head Office of Respondent at Chennai stating that there is a necessity for permanent security staff and in fact, there is an acute shortage of men, it is incorrect to state that they were employed only on account of the litigation filed by concerned employees in the High Court and that their appointment was litigous. All the more Ex.W12 to W13 letters, the Bureau of Civil Aviation Security has also issued circulars which are statutory in nature and in that the Civil Aviation security in exercise of power under Rule 5A of the Aircraft Act, 1934 for the purpose of security of aircraft operations, they have stated that no security related functions shall be entrusted to a contractual person and that such functions have to be performed by the Air Operators themselves through their own regular staff and not on contract basis. Therefore, the allegation of the Respondent/Management that the spirit of the said circular is that it can be entrusted to recognised agencies like TEXCO and EATS is not correct, since the TEXCO and EATS are not on pay rolls of the Respondent/Management. Under such circumstances, the contention of the Respondent/ Management that the concerned employees are employed only on temporary basis for a short period is without any substance. Learned counsel for the Petitioner further contended that even from the duty allocation registers namely Ex.W16 to W40, it is clear that the concerned employees have been performing all the functions of security guards along side regular security guards employed by the Respondent/Management and it is also admitted by the management witness MW1 that the concerned employees are working shoulder to shoulder with the regular security guards and therefore, the contention of the Respondent that these employees were doing the work not on regular basis is without any substance. Even the Government of India circulars prescribe reservation in appointment for ex-servicemen, but the Respondent/Management has not followed the said circulars only to deny the rights of the concerned employees. Though the Respondent relied on the rulings reported in 2006 4 SCC 1 UMA DEVI's case, it is not applicable to the facts of this case because the said judgement clearly states that if the initial recruitment is not illegal and only irregular, it was not contrary to statutory rules, then regularisation is permissible, if there are sanctioned posts available. In this case, it is established that there were sanctioned posts even as per call letters issued in March, 1997 and the vacancies have continued till to-day. Even MW1 has admitted that there are regular vacancies due to death and retirement of regular security guards. Though it is alleged by the Respondent/ Mangement that they have got recruitment procedure, the recruitment procedure produced by the Respondent/ Management is not established before this Court that it is an authenticated one. Under such circumstances, it is to be presumed that there is no statutory rules governing the appointment of security guards. The documents, pleadings and oral testimony clearly establish that the workers concerned were properly interviewed and selected after fulfilling all the requirements for the post as laid down in the call letters. Therefore, since the initial appointment of these employees was not illegal and was as per the norms stipulated by Respondent/Management, the action of the Respondent/Management in denying the regular appointment of the workmen concerned is nothing but an act of unfair labour practice and therefore, it should be rejected. It is well established by the Supreme Court even in 2006 6 SCC 310 MINERALS EXPLORATION CORPORATION EMPLOYEES UNION *Vs.* MINERAL EXPLORATION CORPORATION LTD. wherein the Supreme Court has held that *"if on a scrutiny of relevant records and evidence, the employees make out a case for regularisation, then they should be regularized and given the status of Permanent workmen."* Under such circumstances, this Tribunal has to order regularisation of the concerned employees in the Respondent/Management.

9. But, as against this, learned counsel for the Respondent contended that no doubt, it is alleged that the concerned employees were appointed on the call letters issued by the Respondent/Management, it is clear from the appointment letter issued by Respondent/Management that they were appointed for 110 days on temporary basis and the arrangement was only a stop gap arrangement, as per order 3(d) of the Standing Orders which is marked Ex. M22, a temporary workman means a workman engaged for a limited period or for work of a temporary nature. Further, order 3(b) of the Standing Orders state that "a permanent workman means, a workman who has been engaged to fill a permanent vacancy on permanent basis and whose appointment has been confirmed in the vacancy in writing after the satisfactory completion of probation." Thus it is clearly described and distinguished the position of the Petitioners which was reiterated in the call letters given to them during their engagement in 1997 to 1998 under Ex.W3 to W7. Therefore, it is clear that it was not as if these employees who accepted such temporary engagement were not aware of the nature of their employment. Further, even from the copy of letters dated

23-10-97 and 23-12-97, which are marked as Ex. M26 to M27 respectively written by Deputy Manager & Senior Managerof HRD of Respondent/Management to the Assistant Director, Department of Ex-Servicemen Welfare Board, made this position very clear that—"presently there is a ban on recruitment and we are unable to take any action on the applications of those candidates whose names have been sposored to us through your office. Further action will be taken only on after the bank on recruitment is lifted." Thus, the above said lettes and call letter clearly indicated their nature of entry into Respondent/ Mangement which is accepted by the concerned employee with open eyes and if the concerned employees were not satisfied with the terms and conditions stipulated by Respondent/Management, they would not have accepted the engagement for a temporary period as there was no compulsion to accept the same. Further, the criteria/ statndard prescribed for recruitment of the temporary security guards and that of permanent security guards are at variance as envisaged under Ex. M33 and it is clear that concerned employees were not undergone the elaborate recruitment procedure, physical endurance test, medical fitness assessment etc. during their initial entry. If the concerned employees undergone such procedure, they would have been issued with an offer letter stipulating the terms and conditions of employment as a token of acceptance of the siad terms & conditions, the candidates are required to give the acceptance form duly signed by them. But the concerned employees neither produced such offer letters given by the Respondent/Management nor any acceptance form submitted by them to prove their recruitment made on the above said lines following the due process or the rules of appointment. Instead, they relied upon the call letters only which clearly talks about the temporary engagement. Even according to the concerned employees, their appointmens were only by oral test. WW1 has clearly admitted in his evidence that during his selection only oral test was conducted by the officials of the Respondent/Management. Furthermore, the concerned employees are not able to place any material to prove their selection as per the rules laid down. Even for argument sake that the recruitment procedure produced by the Respondent/Management is not authenticated one, the concerned employees have not established before this Tribunal that the selection made by the Respondent/ Management was as per rules laid down by the Respondent/ Management. When the Respondent/Management has contended even before the Hon'ble High Court that the concerned employees have not undergone physical endurance test etc., the concerned employees have not established that there is no such procedure as laid down by the Respondent/Management namely undergoing physical endurance test and medical test. Therefore, the concerned employees initial entry was not on par with the procedure adopted to the permanent security guards. In other words, the concerned employees failed to produce any evidence to prove that their entry to be in line with the regular recruitment process. Therefore, it is only a stop gap arrangement made by the Respondent/Management and these employees were recruited only to meet the needs of situation prevailing during the year 1997-98 and when the engagment of concerned employees came to an end by efflux of time, they had no right to continue in the post and to claim regularisation in service in the absence of any rule providings for regularisation afer the period of service. When the appointment was purely for a limited period, on expiry of the period, the right to remain in the post came to an end. But the Petitioners right from the year 1997 initiated legal interference by filing W.P. No. 17159 of 1997 which was dismissed on merits at the admission stage itself by the High Court. The Petitioner only to prolong the issue filed another W.P. No. 6727 of 1998 suppressing the fate of earlier Writ Petition and got it allowed on 26-10-98 which was struck off by the Division Bench in Writ Appeal No. 1622 of 1998 on 3-3-2003. Not stopping with this, the Petitioners went upto the Supreme Court by filing SLP No. 86777 of 2003 which was withdrawn by them later for the reasons best known to them. Thus, the concerned employees were allowed to continue beyond three months period due to these pending litigations and the concerned employees purposely acceptance the engagement for a limited period without much hesitation expecting to get regularised in future for which they have initiated proceeding before legal forums. Only under the cover of order of the High Court, the concerned employees managed to continue their litigious employment till date, which would not entitle them to any right to be absorbed or made permanent in the service. It is well settled even in cases where irregular appointments of duly qualified persons in duly sanctioned vacant posts who have continued to work for the years or more but without the intervention of orders of the Courts or of Tribunals, the question of regularisation of the services of such employees may have to be considered on merits in the light of principle settled by the Court as held by the Supreme court. Therefore, the concerned employees who were not recruited against any sanctioned vacant posts during 1997 but engaged only for a temporary period are not at all justified in asking for such relief of regularisation and they are continued in service till date only because of the pending proceedings initiated by them in legal forums and therefore, their prayer has to be rejected as per the judgements of High Courts and Supreme Court. There is no evidence either oral or documentary placed before this Tribunal in support of the Petitioners satisfying the minimum qualifications prescribed as evisaged under Ex. M35 to M33 and there is no point in the claim of the concerned employees for regularisation as even during 1997, they were not recruited against any sanctioned posts. On the other hand, their initial entry was only for a temporary period as clearly mentioned in the call letters

which were marked as Ex. W3 to W8 by the concerned employees themselves. Since the initial entry itself is only temporary and a stop gap arrangement and is not against any sanctioned vacancy, the question of regularising the Petitioners on such a non-existing vacancy would never survive for consideration. It is also established by the Respondent/Management that they have taken a policy decision to concentrate on the core activities rather than on peripheral functions like the one performed by the concerned employees. Therefore, during 1997, the Respondent resorted to engagement of temporary guards purely as an interim arrangement with the intention to hand over the work to its subsidiaries that were to become functional at Chennai and therefore, it is a managerial function and the concerned employees have no *locus standi* to comment on the same. Further, it is open to employer to formulate its policy in awarding the work to the contractor or get it done through employees engaged by him and not directly. In 2004 (4) LLN 52 Union of India Vs. R.N. Ayare, the Supreme Court has held that *"it is open to the employer to formulate its policy in awarding the work to the contractor to get it done through employees engaged by him and not directly and when such a policy is formulated and adhered to there can be no cause for grievance for the employees"*. Therefore, the concerned employees cannot question the right of the Respondent/ Management with regard to the policy decision taken by it. Furthermore, the concerned employees' quoting communication from Bureau of Civil Aviation, no doubt, a circular, but the allegation is misconceived and this Respondent is not at all violating the regulations imposed by Bureau of Civil Aviation. The spirit of the circular issued by Bureau of Civil Aviation is that no private agencies should be entrusted with the security related functions at the airports. The contract security guards engaged by the Respondent/Management are awarded TEXCO which is a Government of Tamil Nadu Undertaking and also to Ex-Servicemen Air link Transport Services (EATS) run by retired ex-servicemen personnel whose Chairman is the Director General of Re-settlement who is a serving defence personnel presently in the rank of Colonel. Further, the contract security personnel are deployed in the operational areas of the airports with the knowledge and approval of Bureau of Civil Aviation Security and therefore, the concerned employees have not justified in making wild and vague allegations questioning the functions of the Respondent/Management. Furthermore, the concerned employees cannot even make a mention about the circulars issued by Bureau of Civil Aviation Security, since the circulars were issued in 1999 and by the time, the circulars came to be issued, the concerned employees approached the High Court of Madras and obtained order of *status quo* on 26-10-98. If the circulars issued by Bureau of Civil Aviation Security made applicable to concerned employees, their services would have been dispensed with on the basis of the said circulars. Further, only on account of the order of *status quo* obtained by the concerned employees, they were allowed to continue as temporary guards and therefore, they cannot rely on the circulars as the same will not in any way improve their position as it stood in the year 1997, when they were engaged on temporary basis for a period of 110 days. The Respondent/Management produced documents Ex. M30 to M32 to show that there was a total freeze on recruitment as early as June, 1997 and these documents clearly show that no fresh recruitment should be made and the existing vacancy should be forthwith abolished and all current vacancies lying vacant for over one year should be deemed to be abolished in terms of Ministry of Finance's O. M. No. 7(7) E-Co-ord. /93 dated 3rd May, 1993. No doubt, the concerned employees relied on two documents namely Ex. W14 & W15 which were produced by the Respondent as requested by the Petitioner union before this tribunal. But these letters written by Senior Manager, HRD to their higher authorities and it is mentioned therein that due to recruitment ban since 1995, no recruitment has been taken place since then and moreover, these letters are only suggestions given by officials to higher authorities which in no way confers any right given to the concerned employee. When the respondent/Management has taken a policy decision to outsource the security functions to TEXCO, which is a Government of Tamil Nadu Undertaking and Ex-servicemen Air link Transport Services run by retired ex-servicemen personnel, the Petitioner cannot question the said policy decision. Further, in this case, WW1 himself has admitted in cross examination that he was paid on daily wages basis calculated for a month. Therefore, when a person who was appointed on daily wage basis cannot be said that he was appointed to the post according to the rules of the Respondent/Management. Therefore, a temporary employee who has no right to the post cannot claim regularization or permanency in the Respondent/ Management. Even in Uma Devi's case the Supreme Court *has clearly held that "however, consistent with the scheme for public employment, unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee. Therefore a contractual appointment comes to an end at the end of the contact, an appointment on daily wages or casual basis comes to an end when it is discontinued and a temporary appointment comes to an end on the expiry of its term and no employees so appointed can claim to be made permanent on the expiry of their appointment. For, when regular vacancies in posts are to be filled up, a regular process of recruitment or appointment has to be restored to as per the constitutional scheme and cannot be done in a haphazard manner based on patronage or other considerations."* In this case, since the concerned employees were appointed only on temporary basis that too for 110 days, they cannot claim any priority and they are not entitled to claim permanency or regularisation in the services of the respondent/Management and therefore, they are not entitled to claim any benefits in this dispute.

10. I find much force in the contention of the learned counsel for the Respondent because in this case, though the Petitioner produced number of documents, they have not established before this Tribunal that the concerned employees appointments were for regular vacancy on permanent basis. It is very clear from the appointment letter produced by them that they were appointed only on temporary basis and that too for a period of 110 days. Further, they are continued in the Respondent/Management only due to the legal proceedings taken by them in various legal forums. Under such circumstances, since the concerned employees have not established that they are entitled to be regularised in the services of the Respondent/ Management, I am not inclined to accept that they were appointed in regular/permanent vacancies. As such, I find this point against the Petitioner union.

Point No. 2 :

The next point to be decided in this case is to what relief the concerned employees are entitled ?

11. In view of my foregoing findings that the concerned eight employees are not entitled for regularisation, I find the Petitioner union is not entitled to the relief as prayed for. No Costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A., tanscribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the Claimant : WW1 Sri S. Joseph Xavier
WW2 Sri G. Rajendran
WW3 Sri R. Venkatesalu
WW4 Sri V. Srinivasan
WW5 Sri R.C. Balachandran
WW6 Sri R. Thirunavukkarasu
WW7 Sri R. Srinivasagan
WW8 Sri K. Narasimhan

For the Respondent : MW1 Sri S. Iyyaswami

Documents Marked :

For the I Party/Petitioner :

Ex. No.	Date	Description
W1	Nil	Zerox copy of the statement showing number of days worked by concerned employees.
W2	9-4-97	Zerox copy of the call letter issued by respondent to concerned employee.
W3	25-6-97	Zerox copy of the appointment letter issued by Respondent/Management to Sri Balachandran.
W4	Nil	Zerox copy for the Postal acknowledgment.
W5	6-8-97	Zerox copy of the appointment letter issued by Respondent/Management to Sri Joseph Xavier.
W6	Nil	Zerox copy of the postal acknowledgement.
W7	07-02-98	Xerox copy of the appointment letter issued Respondent/Management to Sri Rajendran.
W8	26-05-98	Xerox copy of the extension order issued to Mr. Rajendran.
W9 Series	29-10-03	Xerox copy of the billing form of concerned employees
W10 Series	Nil	Xerox copy of the cargo manifest
W11	Nil	Xerox copy of the statement showing security services rendered to foreign carriers by security at Chennai.
W12	Nil	Xerox copy of the circular No. 19/99 issued by BCAS.
W13	23-08-01	Xerox copy of the Circular No. 10/2001 issued by BCAS.
W14	01-12-97	Xerox copy of the letter from Senior Manager, HRD to General Manager HRD, Air India, Mumbai.
W15	09-05-00	Xerox copy of the letter from Senior Manager, HRD to Regional Deputy Commissioner of Security
W16	17-02-01-25-04-01	Original duty allocation register
W17	26-04-01-02-07-01	Original duty allocation register
W18	08-09-01-13-11-01	Original duty allocation register
W19	14-11-01-19-01-02	Original duty allocation register
W20	20-01-02-28-03-02	Original duty allocation register
W21	28-03-02-28-04-02	Original duty allocation register
W22	28-04-02-02-07-02	Original duty allocation register
W23	02-07-02-07-09-02	Original duty allocation register
W24	07-09-02-04-10-02	Original duty allocation register
W25	04-10-02-30-10-02	Original duty allocation register
W26	02-04-03-09-06-03	Original duty allocation register
W27	09-06-03-15-08-03	Original duty allocation register
W28	15-08-03-20-10-03	Original duty allocation register

W29	26-12-03-02-03-04	Original duty allocation register
W30	02-03-04-07-05-04	Original duty allocation register
W31	13-07-04-18-09-04	Original duty allocation register
W32	18-09-04-20-09-04	Original duty allocation register
W33	13-07-01-11-03-05	Original duty allocation register
W34	Nil	Xerox copy of the letter from Petitioner Union raising dispute before Assistant Labour Commissioner (Central)
W35	Nil	Oct-Nov, 2005 issue of Magic Carpet
W36	Nil	Xerox copy of the duty roster of Respondent w.e.f. 2-1-06
W37	Nil	Xerox copy of the duty roster w.e.f. 10-3-06
W38	Nil	Xerox copy of the air cargo manifest
W39	Nil	Xerox copy of the A/C hold check sheet
W40	Nil	Xerox copy of the statement showing the names of apron assistants Attended duty

For the II Party/Management :—

Ex. No.	Date	Description
M1	29-12-95	Xerox copy of the advice by Ministry of Civil Aviation
M2	19-04-96	Xerox copy of the instruction from Head office for 10% Reduction in staff strength
M3	05-05-96	Xerox copy of the circular regarding no recruitment of staff
M4	30-05-96	Xerox copy of the circular regarding no recruitment of staff
M5	27-03-01	Xerox copy of the AVSEC order No. 3/2000 issued by Commissioner of Security of Civil Aviation
M6	04-02-99	Xerox copy of the circular issued by Government of India
M7	13-11-99	Xerox copy of the order in W.P. No. 17159/97
M8	27-04-98	Xerox copy of the affidavit of Petitioner in W.P. 6727/98
M9	20-06-98	Xerox copy of the counter affidavit in W.P. 6727/98
M10	26-10-98	Xerox copy of the order in W.P. 6727/98
M11	17-11-98	Xerox copy, of the Writ Appeal No. 1622/98 filed by Petitioner
M12	Nov. 98	Xerox copy of the affidavit of Petitioner in W.A. 1622/98
M13	29-06-98	Xerox copy of the affidavit of Petitioner in W.A. 1622/98
M14	03-03-03	Xerox copy of the order in W.A. No. 1622/98
M15	10-03-97	Xerox copy of the Communication from Employment Office for unskilled
M16	06-03-97	Xerox copy of the letter from Respondent to Employment Exchange
M17	06-03-97	Xerox copy of the letter from Respondent to Ex-servicemen Directorate
M18	10-07-97	Xerox copy of the requisition form
M19	01-11-99	Xerox copy of the circular No. 19 of 1999 from BCAS
M20	23-08-01	Xerox copy of the circular No. 10 of 1999 from BCAS
M21	29-12-95	Xerox copy of the Government of India instructions
M22	Nil	Extract of standing orders
M23	19-04-96	Xerox copy of the instructions from HRD to all Deptts
M24	29-07-97	Xerox copy of the order of appointment to Thirunavukkarasu
M25	14-10-97	Xerox copy of the letter from Assistant Director of Ex-servicemen Directorate to Respondent
M26	23-10-97	Xerox copy of the reply given by Respondent
M27	23-12-97	Xerox copy of the letter regarding vacancy Notification
M28	07-02-98	Xerox copy of the appointment order issued to Mr. Rajendran
M29	16-06-98	Xerox copy of the vacancy notification to Ex-servicemen Directorate
M30	23-06-97	Xerox copy of the office memo regarding 10% cut in Staff strength of Respondent/Management
M31	21-04-98	Xerox copy of the instruction from Ministry of Civil Aviation regarding 10% cut in staff strength
M32	01-05-98	Xerox copy of the minutes of meeting on 10% cut in staff strength
M33	Nil	Xerox copy of the recruitment procedure of Respondent

नई दिल्ली, 9 मई, 2007

का.आ. 1603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 419/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-05-07 को प्राप्त हुआ था ।

[सं. एल-12012/124/2004-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 419/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 09-05-2007.

[No. L-12012/124/2004-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 27th March, 2007

PRESENT: K. JAYARAMAN : Presiding Officer

Industrial Dispute No. 419/2004

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workmen)

BETWEEN

Sri K. Subbaian : I Party/Petitioner

AND

The General Manager, Indian Overseas Bank, Chennai. : II Party/Management

APPEARANCE

For the Petitioner : Mr. Mahadevan & Charles Muthu Santhan, Advocates

For the Management : M/s. NGR Prasad, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/124/2004/IR(B-II) dated 29-09-2004 has referred this Industrial Disputes to this Tribunal for adjudication. The Schedule mentioned dispute in the order of reference is —

> "Whether the punishment of discharge from service imposed on Sri K. Subbian, Daftry by the management of Indian Overseas Bank, Chennai is legal and justified? If not what relief the workman is entitled to? "

2. After the receipt of the reference, it was taken on file as I.D. No. 419/2004 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allgegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner joined the Respondent/Management at Marungoor branch in Kanyakumari District as messenger in the year 1983. While so, in the year 1988 with the sole intention to safeguard the then Assistant Manager Mr. D. Arunachalam by his colleagues of Nagercoil main branch, the Petitioner was made as scapegoat and a false charge has been framed against him and he was kept under custody for about 15 days by threatening the Petitioner and made him to sell his wife's land for a meagre amount to cover up the fraudulent. Not satisfied with his explanation, an enquiry was ordered to be conducted against him. The Disciplinary Authority namely Mr. S. Balaguru, who gave chargesheet to the Petitioner acted as Enquiry Officer. The Enquiry Officer did not take in to consideration how the money is swindled is paid bank and the employee. The disciplinary Authority had in advance, confirmed the punishment of discharge of Petitioner from service. In the enquiry, the material witness namely Mr. D. Arunachalam was not examined. The Investigation Officer has also helped a lot and saved Mr.D.Arunachalam from the fraud. The Disciplinary Authority and the Appellate Authority have not followed the principles of natural justice and they imposed the punishment of discharge on the Petitioner. Both the Disciplinary Authority and Appellate Authority have not considered the submission made by the Petitioner. Even the representation made by the Petitioner has not been considered and no reply was sent by the Respondent/Management. Hence, for all these reasons, the Petitioner prays that he may be reinstated in service with all other benefits including back wages and also consequential benefits.

4. As against this, the Respondent in its Counter Statement contended that the Petitioner while working as a daftry was placed under suspension on 27-8-98 and charge sheet was also issued on 5-12-98 by the Disciplinary

Authority as the Petitioner fraudulently withdrawn the cash amount of Rs.75,500 and misappropriated the same through one Mrs. Mariya Pushpam from NRE S.B. Account No. 5303 of Mr. V. Subramanian by forging the signature of the accountholder in two cheques. The Petitioner was charged that he has caused damaged to the property of the bank and to its customer and thereby committed gross misconduct and also done the acts which are prejudicial to the interest of the bank within the meaning of gross misconduct. The Petitioner was asked to show cause in writing by the Disciplinary Authority. The Petitioner in his reply merely denied the charges and therefore, an enquiry was ordered to be conducted against the Petitioner. The enquiry was held on 22-4-99 and the Petitioner and his defence representative have participated in the enquiry proceedings. On behalf of the management two witnesses were examined and eight documents were marked in the enquiry. The management witnesses were extensively cross examined by the Petitioner's representative. The Petitioner failed to submit his written brief, though sufficient time of one month was given to him. Hence, the Disciplinary Authority gave his findings on 1-6-99 found the Petitioner guilty of charges of misappropriation and the same was forwarded to the Petitioner on 2-6-99 with the show cause notice proposing the punishment of discharge. On 16-6-99 through his letter the Petitioner accepted the misconduct and he prayed for leniency in the punishment. But the Enquiry Officer has imposed the punishment of discharge on 29-6-99 as the proved charges are gave in nature. The Petitioner preferred an appeal dated 15-7-99 to the Appellate Authority and in that appeal, the Petitioner himself admitted the misconduct committed by the Petitioner and also accepted that he himself made good the loss with interest and other charges from saving the bank from any financial loss and requested the Appellate Authority to impose a lesser punishment. But the Appellate Authority rejected his contention and confirmed the order of discharge. While the Petitioner himself has admitted the misconduct through his letter before the Disciplinary Authority and also before the Appellate Authority, it is false to claim that no principles of natural justice has been followed in the domestic enquiry. The allegations that he had been illegally detained by the official of the branch and he was forced to sell his house standing in the name of his wife against threats at him are baseless and made only with a view to get reinstatement. As per the Bipartite Settlement provisions, the Disciplinary Authority can himself act as Enquiry Officer. The Disciplinary Authority in his findings clearly found that cheque book was received by the Petitioner. The Petitioner who took the cheque book with ulterior motive cannot expect others to be punished for his misconduct. It is denied that the management has protected the officer Mr.D.Arunachalam. Even after one year of his earlier admission dated 23-7-98 the Petitioner has admitted his misconduct by his letter dated 15-7-99 before the Appellate authority. Therefore, all allegations with regard to illegal detention by the officials of the branch and the letter obtained from him by assault and coercion are false.The Petitioner having committed misappropriation cannot blame other officers and clerical staff for the misconduct committed by him. The Petitioner was discharged from service based on a duly conducted domestic disciplinary proceedings following all principles of natural justice and provisions of Bipartite Settlement reached between the workmen and Respondent/ Management. The Petitioner has raised this dispute after an inordinate delay of four years and the Petitioner has not given any valid reason for delay in filing the claim petition. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. Under these circumstances, the points for my consideration are :

(i) "Whether the punishment of discharge from service imposed on the Petitioner by the Respondent/Management is legal and justified?

(ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

6. In this case, preliminary issue was framed at the first instance about the conduct of enquiry in which this Tribunal has given a finding that the enquiry held against the Petitioner is just and proper and after that both sides have adduced evidence with regard to the dispute and marked the documents. On the side of the Petitioner, the Petitioner examined himself as WW 1 and he has marked documents Ex.W1 to W32 and on the side of the Respondent one Mr.S.A.Rasheed, Presenting Officer, who conducted the domestic enquiry was examined as MW 1 and EX.M 1 to M23 were marked on the side of the Respondent.

7. In this case, the admitted fact of both sides is that the Petitioner was appointed as messenger at Marungoor branch of the Respondent/Management in Kanniyakumari district and on a charge framed against him, he was discharged from service on 29-6-99 in respect of charge sheet dated 5-12-98. The charge framed against the Petitioner was that he fraudulently withdrew a sum of Rs.75,500 through one Maria Pushpam from NRE account of Sri V.Subramanian and the said Sri Subramanian was in Saudi Arabia and he was holding S.B. Account No. 5303. The allegation on the side of the Respondent is that the Petitioner took two leaves out of the cheque book and asked Maria Pushpam to withdraw two amounts for Rs.37,500 and Rs.38,000 in the name of Pushpam. The Petitioner was charged for misappropriation of the said amounts and an enquiry was conducted and after the Enquiry Officer's report, the Disciplinary Authority has imposed the punishment of discharge and the appeal filed against the said order was also rejected by the Appellate

Authority. The allegation of the Petitioner in this case is that the officer of Respondent/Bank namely Mr.Arunachalam, Mr. Rajavelu, Clerk and Mr. Palaniyapillai, appraiser were threatened him and forcefully obtained the consent letter that the Petitioner alone had misappropriated the said amount of Rs. 75,500 and subsequently, on the admission letter, the Respondent/ Bank has suspended him and a farce enquiry was conducted against him and the punishment of discharge was imposed on him. Learned counsel for the Petitioner contended that the said officer namely Mr. S. Arunachalam and Clerk Mr. Rajavelu and Appraiser Mr. Palaniyapillai were examined in the enquiry and the Enquiry Officer has come to the conclusion that the alleged admission made by the Petitioner which was obtained by coercion and under threat. He further alleged that the Enquiry Officer has not taken into consideration the submissions made by the Petitioner and he has not considered that it is only the officer Mr. S. Arunachalam has made all the mischief and the Petitioner was made as a scapegoat. It is his further argument that though it is alleged that the action was taken against the officer and clerk, the charge framed against them are not the charge framed against the Petitioner and minor punishment was imposed on them, on the other hand, the innocent Petitioner was imposed with the punishment of discharge from service and all the officers of the bank only to safeguard the said Mr. S. Arunachalam, Mr. Rajavelu and Mr. Palaniyapillai have imposed the punishment of discharge on the Petitioner and suppressed the other facts of the case. The Petitioner in the enquiry before this Tribunal has produced number of documents to show that the officer Mr. S. Arunachalam and the Clerk Mr. Rajavelu have obtained his signature in various papers and created the documents only to escape from the crime they have committed and which was not considered by the investigating officer nor the Disciplinary Authority. Even the Appellate Authority has not applied his mind with regard to the facts of this case and he has concurred with the findings of Disciplinary Authority without considering the merits of the case and therefore, the findings of the Enquiry Officer and the punishment imposed by the Disciplinary Authority are perverse. The Enquiry Officer has not considered how the cheque book was taken away from the safe custody of the Manager and how the said Maria Pushpam has signed as payee of the two cheques. On the other hand, the Enquiry Officer has come to the conclusion that the charges framed against the Petitioner was proved on the only ground that he has admitted the case at the beginning. Even at the stage of investigation, the Petitioner has stated the true facts and how the fraud has committed against the bank but even the investigating officer has not considered the sub- missions made by the Petitioner and all the officers colluded together and imposed the gross punishment on the Petitioner and thus, they have safeguarded the interest of the officer and therefore, he prays that an award may be passed in favour of the Petitioner by setting aside the order passed by the Disciplinary Authority which was confirmed by the Appellate Authority.

8. But, as against this, learned counsel for the Respondent contended that though the Petitioner alleged that the officer Mr. S. Arunachalam, Clerk Mr. Rajavelu and Appraiser Mr. Palaniyapillai have coerced the Petitioner and obtained several signatures in blank papers, the Petitioner has taken this stand only after the punishment was imposed by the Disciplinary Authority, on the other hand, before the Disciplinary Authority and before the personal hearing, his only contention was that "even though I was forced to commit mistake due to investigation and collusion of my superior officer for his own pecuniary benefits, I have made good the amount immediately and hence, there is no financial loss to the bank and I assure you that I will never again give cause for any complaint against me in future" and he prayed that the Disciplinary Authority may take a lenient view and also further requested to given a lesser punishment other than the one proposed. Even before the Appellate Authority he has made a submission that "even though I committed mistake immediately on realising my folly, the seriousness of the matter and its consequences, I had made good the monies with interest and other charges to the bank, with good intention of saving the bank from any financial loss" and even in appeal, he requested the Appellate Authority to consider his case with utmost compassion and save him from the punishment of discharge by allowing him to continue in service of the Respondent/Bank with any lesser degree of punishment as the Appellate Authority may deem fit. Thus, he requested only remission of punishment before the Appellate Authority. Though he had filed several documents on the ground that he has given complaint to higher officers, these documents are only an afterthought created for the purpose of this case. Even assuming for argument sake that the admission letter given before the enquiry was obtained by fraud, coercion and undue influence, nothing prevented him from disputing the same before the Disciplinary Authority or Appellate Authority. He has made representation with regard to this case, but on the other hand, even before the Disciplinary Authority and Appellate Authority he has admitted his guilt and his only allegation was that he has done this mistake on the misrepresentation and in collusion with the officers. But, he has not denied that he has not done the mischief of misappropriation and therefore, there is no point in the contention of the Petitioner that the findings of the Enquiry Officer and punishment imposed by the Disciplinary Authority are perverse. Learned counsel for the Respondent contended that there are enough and more evidence to establish the charge framed against the Petitioner and the Petitioner has voluntarily remitted the amounts. Further, during the enquiry, the Manager in his evidence has stated that when the party wanted to encash the cheque and the bank officer wanted the address on the

back of the cheque, the Petitioner intervened and said that he knew the party well and therefore, the address need not be taken in the cheque. Thus, it is clearly established from the evidence of the witnesses and also from the documents produced at the time of enquiry that the Petitioner alone has done the mischief of misappropriation to the tune of Rs. 75,500 and he has also admitted this fact before the Disciplinary Authority and Appellate Authority and there is nothing to show that the Enquiry Officer has given a finding without considering the submissions made by the Petitioner. Though the Petitioner alleged collusion and connivance of the officers, it is not established by the Petitioner before the domestic enquiry. Under such circumstances, it cannot be said that he is innocent and the allegation against the others is one of negligence and they have been appropriately punished and to establish the same, the Respondent has filed documents.

9. Then the learned counsel for the Petitioner contended that the Manager Sri S.Arunachalam, Clerk Mr. Rajavelu were taken into action by the Respondent/ Management, but they were not framed with charges as that of the Petitioner and they have been charged for the offence of negligence and imposed with minor punishment of censure. On the other hand, it is only they who are responsible for the misappropriation and the Respondent has not taken any action for the same. Further, the said officer and clerk were involved in so many fraudulent transactions even prior to this incident and it was found in the service register of the concerned persons, which was not considered by the Enquiry Officer and no charge for misappropriation was framed against the persons and it is only to victimize the Petitioner, the bank has taken action against him and the action of the Respondent/Bank is malafide and discrimination. Though the said officer and clerk were equally responsible and liable for the misconduct, no action was taken against them. Further, he was permitted to retire peacefully and therefore, the order of imposition of punishment of discharge is malafide and it is not justified.

10. But, I find there is no substance in the contention of the learned counsel for the Petitioner because there is nothing to show on record namely the officer Mr. Arunachalam and Clerk Mr. Rajavelu involved in the misappropriation and as such, I find there is no point in the contention of the learned counsel for the Petitioner that the action was taken against them for the said offence.

11. Learned counsel for the Petitioner further contended that though action was taken against the Petitioner under Section 17.6(b) of Bipartite Settlement dated 14-12-1966 Section 17.6 (b) relates to minor punishment namely warning, censure or adverse remarks entered against him and therefore, the major penalty namely discharge from service will not attract Section 17.6(b) of Bipartite Settlement and therefore, the Disciplinary Authority has not applied his mind for imposition of the major punishment and on this ground also the order of punishment is to be set aside.

12. But, on the other hand, learned counsel for the Respondent contended that it is wrong to say that Section 17.6(b) has not dealt with major punishment. On the other hand, Section 17.6 says —An employee found guilty of gross misconduct may :

(i) be dismissed without notice; or

(ii) be compulsorily retired/ removed from service/ discharged with superannuation benefit as would be due otherwise at that stage and without disqualification from future employment....."

Therefore, on this ground also, I find there is no substance in the contention of the learned counsel for the Petitioner.

13. Then the learned counsel for the Respondent relied on the rulings of the Supreme Court in 2003 4 SCC 364 P.C. Kakkar Vs. Chairman & Managing Director, United Commercial Bank and Ors. and 2000 7 SCC 517 Janatha Bazar (South Canara Central Co-operative Wholesale Stores Ltd.) & Ors. Vs. Secretary, Sahakari Noukara Sangha And Others. In the first cited case the Supreme Court has held that "there can be no leniency in the matter of misappropriation, hence the discharge order is justifiable" He further contended that in the second cited case, the Supreme Court has held that "proved case of misappropriation does not call for any sympathy and the reinstatement with back wages is uncalled for and the sympathy as basis for is improper and set aside the order passed by the Tribunal" In that case, the Supreme Court has also held that "in case of proved misappropriation, there is no question of considering past record and it is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases." Relying on both these decisions, the learned counsel for the Respondent argued that in this case the misappropriation by the Petitioner was clearly established and he has also admitted before the Disciplinary Authority and Appellate Authority and only as an after thought he has made several allegations against the officer and also the Disciplinary Authority. Under such circumstances, it cannot be said that the punishment imposed on the Petitioner is excessive or shocking the conscience of the Court, therefore, the dispute is liable to be dismissed

14. I find much force in the contention of the learned counsel for the Respondent because in this case the Petitioner has admitted the guilt not at one time but at several times and he has accepted and admitted the guilt framed against him. His only grievance is that he alone was

not responsible for the misappropriation and several officers were involved in that case. But, he has not established this fact with any satisfactory evidence. Under such circumstances, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

15. In view of my foregoing findings, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th March, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:—

For the I Party/Claimant : WW1 Sri K. Subbian

For the Respondent : MW1 Sri S.A. Rasheed

Documents Marked :—

For the I Party/Claimant :

Ex. No.	Date	Description
W1	15-03-91	Xerox copy of the letter of appreciation issued by Respondent/Bank
W2	20-06-92	Xerox copy of the letter of appreciation issued by Respondent/Bank
W3	19-09-91	Xerox copy of the letter of appreciation issued by Respondent/Bank
W4	03-11-92	Xerox copy of the letter of appreciation issued by Respondent/Bank
W5	05-03-98	Xerox copy of the letter of appreciation issued by Respondent/Bank
W6	05-03-98	Xerox copy of the letter of appreciation issued by Respondent/Bank
W7	Nil	Extract from receiving counter cash book
W8	06-05-98	Xerox copy of the Manager scroll claiming halting Allowance
W9	Nil	Extract from cheque book register
W10	11-03-99	Xerox copy of the letter from Respondent to Petitioner
W11	05-12-98	Xerox copy of the charge sheet
W12	22-12-98	Xerox copy of the reply given by Petitioner to Disciplinary Authority
W13	22-04-99	Xerox copy of the enquiry proceedings
W14	31-05-99	Xerox copy of the written brief submitted by defence Counsel
W15	01-06-99	Xerox copy of the enquiry findings
W16	Nil	Xerox copy of the auction notice issued by Respondent
W17	16-06-99	Xerox copy of the explanation given by Petitioner to Enquiry Officer
W18	29-06-99	Xerox copy of the order of Disciplinary Authority
W19	15-09-99	Xerox copy of the Proceedings of Appellate Authority
W20	30-11-99	Xerox copy of the order of Appellate Authority
W21	21-01-00	Xerox copy of the mercy petition given by Petitioner to Respondent/ Management
W22	1998-2003	Xerox copy of the ration card
W23	1998-2003	Xerox copy of the ration card
W24	23-09-99	Xerox copy of the police complaint
W25	23-09-99	Xerox copy of the acknowledgement
W26	11-12-02	Xerox copy of the letter of Director of Public Grievances with A/D card
W27	12-12-02	Xerox copy of the reminder to Director of Public Grievances
W28	10-01-03	Xerox copy of the letter to Joint Secretary with A/d
W29	11-06-03	Xerox copy of the complaint given to Human Rights Commission
W30	11-07-03	Xerox copy of the order of Human Rights Commission
W31	01-08-03	Xerox copy of the complaint to Human Rights Commission
W32	10-12-03	Xerox copy of the reminder to Human Rights Commission

For the II Party/Management :—

Ex. No.	Date	Description
M1	23-07-98	Xerox copy of the letter from Petitioner to Manager of Respondent/Bank
M2	22-12-98	Xerox copy of the reply given by Petitioner to charge sheet
M3	04-09-98	Xerox copy of the investigation report
M4	22-04-99	Xerox copy of the enquiry proceedings
M5	21-06-99	Xerox copy of the proceedings of personal hearing

M6	15-07-99	Xerox copy of the appeal preferred by Petitioner
M7	20-07-98	Xerox copy of the suspension order issued to Petitioner
M8	05-12-98	Xerox copy of the charge sheet issued to Petitioner
M9	11-03-99	Xerox copy of the order of Disciplinary Authority for enquiry
M10	24-04-99	Xerox copy of the written brief submitting by Presenting Officer
M11	31-05-99	Xerox copy of the written brief submitted by I Party
M12	01-06-99	Xerox copy of the findings of Disciplinary Authority
M13	02-06-99	Xerox copy of the show cause notice issued to Petitioner
M14	16-06-99	Xerox copy of the reply to show cause notice submitted by Petitioner
M15	29-06-99	Xerox copy of the original order of discharge issued to Petitioner
M16	13-08-99	Xerox copy of the notice of personal hearing issued to Petitioner
M17	15-09-99	Xerox copy of the proceedings of personal hearing
M18	30-11-99	Xerox copy of the Appellate order issued to Petitioner
M19	03-11-99	Xerox copy of the letter from Respondent/Bank to Mr. Raja Calling for explanation
M20	03-11-99	Xerox copy of the letter from Respondent/Bank to Mr. Arunachalam calling for explanation
M21	09-06-00	Xerox copy of the penalty of censure issued to Mr. Raja
M22	09-06-00	Xerox copy of the penalty of censure issued to Mr. Arunachalam
M23	27-06-03	Xerox copy of the letter from personnel department of Respondent/Bank to Petitioner.

नई दिल्ली, 9 मई, 2007

का.आ. 1604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार तूतीकोरिन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 29/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-07 को प्राप्त हुआ था ।

[सं. एल-44011/1/2006-आईआर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1604—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 29/2006) of the Central Government Indusrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Tuticorin Port Trust and their workmen, which was received by the Central Government on 9-5-2007.

[No. L-44011/1/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 26th March, 2007

Present: K. Jayaraman, Presiding Officer

Industrial Dispute No. 29/2006

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) between the Management of Tuticorin Port Trust and their workmen]

BETWEEN:

The General Secretary, Tuticorin Port Mariners and General Staff Union, Tuticorin : I Party/Claimant

AND

The Chairman, Tuticorin Port Trust, Tuticorin : II Party/Management

Appearances :

For the Petitioner : Mr. P.K. Rajagopal, Advocate

For the Management : M/s. G. Dhamodaran, Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-44011/1/2006-IR(B-II) dated 17-05-2006 has referred the Dispute to this Tribunal for adjudication. The Schedule mentioned in the order of reference is as follows :—

> "Whether the action of the management of Tuticorin Port Trust is legal and justified in imposing the punishment against Shri V. Mayandi, Out Door Clerk? If not to what relief the workman is entitled to?"

2. After the receipt of the reference, it was taken on file as I.D. No. 29/2006 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner union espouses the cause of Shri V. Mayandi who is working as outdoor clerk in Respondent/ Management. There was a general transfer within the organisation in April, 2003 and the concerned employee Shri Mayandi requested for transfer to zone B Port from III and IV berth of VOC wharf and the transfer was ordered and he joined the same post. While so, the concerned employee received a charge sheet dated 30-4-2003 stating that he had refused to receive the relieving order from the shipping control on 22-4-2003. An enquiry was constituted and witnesses were examined. In that enquiry, minor punishment was imposed on him. Though the minor punishment imposed on the concerned employee, the enquiry report submitted by the Enquiry Officer was not furnished to the concerned employee or to the defence assistant. The punishment was imposed on him without any further reference or communication to the workers concerned. Therefore, the entire process of charge sheet and punishment has been in violation of principles of natural justice and the provisions of Tuticorin Port Trust Employees (Classification, Control & Appeal) Regulations, 1979 and the punishment imposed also is not justified. The appellate order passed by the Appellate Authority confirming the punishment of Disciplinary Authority is unreasonable, unfair and without any legal sanction. Therefore, the Petitioner union prays this Tribunal to set aside the order of punishment dated 25-4-2003 and appellate order dated 30-12-2003 and to pass an award in favour of the concerned employee.

4. As against this, the Respondent in its Counter Statement contended that it is false to contend that no opportunity was given to the concerned employee in the enquiry. The departmental enquiry was conducted in a fair and proper manner rendering the workman concerned reasonable opportunity to defend himself through his union. The Enquiry Officer only after giving a reasonable opportunity concluded the departmental proceedings and submitted his findings along with the enquiry report to this Respondent. After receipt of the findings, the II Party/ Management which was agreed to the findings of the Enquiry Officer and after going through the enquiry report along with legal evidence available on record had come to the conclusion that misconduct levelled against the concerned workman was proved and therefore, imposed the minor punishment on the concerned workman to provide him a chance to correct himself. There is no violation of natural justice and the provisions of Tuticorin Port Trust Employees (Classification, Control & Appeal) Regulations, 1970. In the Respondent/Management there is no second stage of departmental enquiry. The Respondent have furnished not only the enquiry report but also the documents sought for by the concerned employee, therefore, the contention of violation of natural justice is not at all sustainable. Hence, for all these reasons the Respondent prays that claim may be dismissed with costs.

5. In these circumstances, the points for my consideration are—

(i) "Whether the action of the Respondent/ Management in imposing the punishment against Sri V. Mayandi is legal and justified?"

(ii) "To what relief the concerned employee is entitled?"

Point No. 1:

6. After filing Claim Statement and Counter Statement respectively by both parties, the matter was posted for enquiry. Even after the case was adjourned to several hearings, neither the Petitioner nor his advocate appeared before this Court for enquiry. A notice was also issued to the concerned employee to appear before this Tribunal for enquiry. But even after that the concerned employee has not appeared before this court nor his advocate. Hence, the Petitioner was called absent and set ex-parte.

7. At this juncture, the point for my determination is —

> "Whether the Petitioner has established his contention before this Tribunal with any satisfactory evidence?"

8. The Petitioner alleged in the Claim Statement that the order of punishment imposed by the Respondent/ Management on the concerned employee is in violation of principles of natural justice and it is against the provisions of Tuticorin Port Trust Employees (Classification, Control & Appeal) Regulations, 1979, but he has not appeared before this Tribunal to establish how the order punishment imposed on the concerned employee is violative of principles of natural justice or provisions of Tuticorin Port

Trust Employees (Classification, Control & Appeal) Regulations, 1979. No document was produced on the side of the Petitioner to establish his contention and no evidence was adduced and the Petitioner remained absent and was set ex-parte. Under such circumstances, I find the action of the Respondent/Management in imposing the punishment against the concerned employee is legal and justified.

Point No. 2 :

The next point to be decided in this case is to what relief the concerned employee is entitled?

9. In view of my foregoing findings, I find the concerned employee is not entitled to any relief as prayed for by the Petitioner Union. No costs.

10. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th March, 2007

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On the either side : None

Documents Marked :—

On either side : Nil

नई दिल्ली, 9 मई, 2007

का.आ. 1605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण पूणे के पंचाट (संदर्भ संख्या 16/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-05-2007 को प्राप्त हुआ था ।

[सं. एल-12011/61/2006-आईआर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1605—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 16/2006) of the Indusrial Tribunal, Pune (Maharashtra) as shown in the Annexure, in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 09-05-2007.

[No. L-12011/61/2006-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI S.M. KOLHE, INDUSTRIAL TRIBUNAL, PUNE

Reference (IT) No. 16 of 2006

BETWEEN:

Bank of Maharashtra,
Pune-111005

—First Party

AND

Bank of Maharashtra Karmachari Sangh,
Pune.

—Second Party

In the matter of : Ignorance of the claim of senior most temporary part-time sub-staffs and violation, if any, of Government guidlines and correctness of action in not providing the opportunities to P.T.S. Staff for their regularisation in service on the requirement.

APPEARANCES:

: Shri S.H. Tamhane, Sr. Manager for First Party.

Shri V.V. Khaladkar, Asstt. Secretary for Second Party

AWARD

Date : 25-4-2007

1. Dispute under reference is in respect of Ignorance of the claim of senior most temporary part-time sub-staffs and violation, if any of Government guidelines and correctness of action in not providing the opportunities to P.T.S. Staff for their regularisation in service on the requirement.
2. Statement of Claim and Written Statement are filed.
3. Both parties are present before me. They have filed purshis and contended that the dispute is amicably settled between the parties.
4. Both parties have requested to dispose of their reference as the dispute is amicably settled.
5. In such circumstances, I pass the following Award.

AWARD

1. Reference is disposed of as the dispute is amicably settled.
2. Award be prepared accordingly.

S. M. KOLHE, Industrial Tribunal

नई दिल्ली, 9 मई, 2007

का.आ. 1606.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. फैडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम के पंचाट (संदर्भ संख्या 274/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-05-07 को प्राप्त हुआ था ।

[सं. एल-12012/248/1995-आईआर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1606.—In pursuance of Section 17 of the Industrial Disputes 1606Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 274/2006) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Federal Bank Ltd., and their workmen, which was received by the Central Government on 09-05-2007.

[No. L-12012/248/1995-IR (B-I)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present:

Shri P.L. Norbert, B.A., L.L.B.,
Presiding Officer

(Wednesday the 25th day of April, 2007/5th Vaisakha, 1929)

I.D. 274/2006

(I.D. 13/97 of Labour Court, Ernakulam)

Workman/Union	:	The General Secretary Federal Bank Staff Union No.2, Champion Buildings, Bank Junction Aluva-683 101. Adv. Shri H.B. Sheneoy
Management	:	The Chairman M/s. Federal Bank Ltd. Head Office Aluva-683 101 Adv. M/s.. B.S. Krishnan Associates

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

" Whether the action of the management of M/s. Federal Bank Ltd. is justified proper and legal?

(1) In dispensing the services of Sh. P. Shareef w.e.f. 19-3-94.

(2) In engaging the temporary workman in various spells.

If not, to what relief the workman is entitled?"

2. The facts of the case in brief are as follows:

The workman, Shri K.S. Narayanankutty was appointed as temporary bankman at Mannampetta Branch of Federal Bank on 7-1-1992. He worked as such at different spells till 4-9-1992. Thereafter his service was dispensed with. The workman had requested for regularization. The management did not consider it favourably. Instead he was retrenched. The action is in violation of the provisions of I.D. Act and Sastry Award. No retrenchment compensation was given to him. Juniors to the workman were retained while he was terminated. Immediately after termination fresh hands were taken and they were regularised. No service records are maintained by the bank. The conduct of the management amounts to unfair labour practice. The workman was appointed against a permanent vacancy and the vacancy continued even after retrenchment. Hence the workman is entitled for reinstatement with back wages.

3. The management in their written statement contend that the workman was appointed against a temporary vacancy arisen out of leave of a permanent hand and due to increase in work. The bank denies that there was a permanent vacancy during the time the workman was in service and he was appointed at different spells for a total period of 46 days during the period from 7-1-1992 to 4-9-1992. He has no right for regularization. The bank has not retrenched him. At the end of contract period he was relieved of his duties. Hence there is no violation of any provisions of I.D. Act or Sastry Award. The workman had submitted an application in 1994 to permanent post of bankman. No juniors were retained at the time of termination. No fresh hands were taken after termination of the workman. The workman has no right whatsoever for reinstatement or for any relief.

4. In the light of the above contentions the following points arise for consideration :

(1) Is the termination legal?

(2) Is the workman entitled for reinstatement?

(3) Is he entitled for any other relief?

The evidence consists of the oral testimony of WW1 and WW2 on the side of workman and documentary

evidence of Exts. M1 to M11 series on the side of management. The testimony of WW2 was recorded in I.D.269/2006, a connected case. An application filed to read that testimony into this case, it stands allowed.

5. Point No. (1) :

The claim statement as well as the written statement contains the admission that the workman was appointed as temporary bankman at different spells. But according to the workman he was appointed against a permanent vacancy, while the management contend that it was on leave vacancy and sometimes due to increase in work.

'Temporary employee' is defined in Sastry Award in Para 508 (c), which is applicable to all banks and was adopted in the Bipartite Settlements and certain provisions sometimes were modified. It reads:

> " 'Temporary employee' means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature."

In the subsequent Desai Award the definition was carried over and later in the 1st Bipartite Settlement dated 19-10-1966 'temporary employee' was defined in Clause 20.7 as follows:

> " 'Temporary employee' will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes workman other than a permanent workman who is appointed in temporary vacancy caused by the absence of a particular permanent workman."

It is relevant to note the next clause, 20.8:

> "A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the bank shall make arrangements for filling up the vacancy permanently.....".

To the 1st Bipartite Settlement Federal Bank was not a party. They became a party to the 3rd Bipartite Settlement of 1979 only. Clause 1 of 3rd Bipartite Settlement reads as follows :

> "In respect of 49 banks listed in Schedule I to this Memorandum of Settlement except State Bank of India, ... it is agreed that the provisions of the Sastry Award and of the Desai Award as modified by the Memorandum of Settlements dated 19th October, 1966, 12th October, 1970, 23rd July, 1971 and 8th November, 1973 referred to above shall govern the service conditions except to the extent that the same are modified by this settlement."

The definition of 'temporary employee' in 1st Bipartite Settlement is not altered or modified in 3rd Bipartite Settlement. Therefore the same definition contained in Sastry award and modified by the 1st Bipartite Settlement apply to Federal Bank and its employees. Either as per the provisions of Sastry Award or the provisions of Bipartite Settlements a temporary employee does not get a right to continue in the employment. Certain privileges like, to remain until the juniors are retrenched on the principle of 'last come first go' and also preference in case of recruitment to permanent posts alone are reserved for them. As a matter of right a temporary employee cannot claim that he is entitled to continue in service or he should be regularized. As per clause 20.8 of 1st Bipartite Settlement temporary appointment shall not exceed 3 months, within which time arrangement has to be made for regular appointment through recruitment. Though as per S-2 (s) of I.D. Act even a temporary employee or a casual employee is a 'workman', he does not get a right for permanency, but only a right U/s-25F of the Act for retrenchment notice and compensation provided he has worked continuously for a period of one year or 240 days prior to his termination. So far as the workman is concerned, admittedly he worked only for 33 days in different spells from 7-1-1992 to 4-9-1992 and that too not continuously, much less prior to his termination. Ext. M9 to M11 series are appointment and relieving orders. Therefore he is not eligible for the benefit u/s-25F of I.D. Act.

6. The learned counsel for the workman submits that the management is resorting to unfair labour practice by appointing a person on temporary basis at different spells. The intention is to deny such person of the benefits of a permanent employee. He contends that the workman in this case was appointed in a permanent vacancy and the vacancy continued even after his termination. There was no need to give artificial breaks during his service. Hence the intention of the bank was to deprive him of certain benefits due to a permanent employee. The termination therefore is illegal.

7. It is to be noted that the bank does not admit that the workman, Shri K.S. Narayanankutty was appointed in a regular or permanent vacancy. According to the bank he was appointed in leave vacancies sometimes and on other occasions due to increase in work. The workman was examined as WW1. He admits that one Shri C.V. Joseph was the permanent peon of Mannampetta Branch. Ext. M9 appointment order confirms this fact. WW1, the worker says that when C.V. Joseph was promoted he was appointed. That is not true as seen from Ext. M9 temporary appointment order issued to workman. He worked only up to 4-9-1992. Thereafter it was in 1994 and 1996 the applications were invited for recruitment to the permanent post of bankmen. Exts. M2 and M3 are notifications calling for applications. In 1992 no vacancy

had arisen and no applications were called for. That apart, there is no evidence to show that any vacancy had arisen even in 1994 in Mannampetta Branch. Ext. M1 and M3 are his applications submitted in 1994 and 1996. He was over aged and hence his application was rejected. These were vacancies that arose in different branches of Federal bank. There is no evidence to show that there was a permanent vacancy in Mannampetta Branch when the services of workman was terminated. It is true that similar other workers were employed on temporary basis alternatively. This is done in accordance with Para 20.8 of Ist Bipartite Settlement which provides that, temporary appointments shall not exceed a period of 3 months and for further employment the bank shall make arrangements to make regular recruitments.

8. Moreover, the Federal Bank Bulletin dated 23.9.1987 (Para 2) says that in the case of sub-staff, temporary appointment can be made only to a vacancy arising out of long absence/leave of permanent incumbent and not in a vacancy caused by promotion, transfer, retirement, suspension, termination, dismissal, death, etc. It is also provided that as far as possible no temporary appointment shall be made during casual leave vacancies. In Para 3 it is stated that temporary appointment shall not be given to a candidate for more than 85 days and at a time not exceeding 10 days. Further paragraphs in the Bulletin says that appointment order and relieving order shall be given to temporary employees, a panel of suitable persons shall be prepared and temporary appointments shall be made only out of the panel, a register called 'the Register for Temporary Appointments' shall be maintained, the names of persons who complete 85 days' temporary service shall be removed from the panel and they shall not be further engaged, etc. It is in compliance with the said clauses in the Bulletin as well as Para 20.8 of Ist Bipartite Settlement that workers are posted as temporary bankmen for a period not exceeding 85 days. The intention may be to avoid claims of temporary employees for regularisation. So far as branches are concerned they are merely following the instructions in the Bulletin as well as the Bipartite Settlement. The unions are parties to the Bipartite Settlement and they are aware of the position of a temporary bankman and the manner of their appointments in different branches. Still the unions agreed to the terms in Para 20.8 of Ist Bipartite Settlement, according to which the temporary appointment shall not exceed 3 months. But at the same time the workman says that the management is committing unfair Labour practice in the matter of temporary appointments. Let me now refer to item No. 10 of Part I of Vth Schedule to I.D. Act which enumerates unfair labour practice :

> "to employ workmen as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

The above provision clarifies that the practice of temporary appointment for several years is to be treated as an unfair labour practice and not temporary appointments for shorter spells. However the learned counsel for the workman, relying on the decision of Madras High Court reported in K. Rajendran v. Dir (Persl) Pro & Eqp. Cor .of India Limited New Delhi & Anr. 1995 III-L.L.J. Suppl) 240, argued that non-renewal of contract shall not be used as a weapon against the workman by the management in order to take him out of the purview of retrenchment u/s-2 (00) of I.D. Act. In the reported case the petitioner in the writ petition was appointed as messenger initially for 44 days and thereafter for different spells with a break of one day. He continued to be so appointed for a period of 3 years. Then he was terminated. However the post of messenger continued without anyone else appointed. It was held by the Madras High Court that the intention of the management was to take the workman out of scope of retrenchment u/s-2 (OO) of I.D. Act. It is further observed that S-2 (OO) (bb) is to be strictly construed and if there is any hint of victimization or exploitation of the workman the provision should be interpreted in favour of the workman. In the reported case, considering the factual position there it was held that the termination amounted to retrenchment falling within S-2 (OO) of I.D. Act and an unfair Labour practice and therefore the petitioner in that case was entitled for the benefits u/s-25F of the Act. However, on facts the case on hand differs from the reported case. The workman in the present case was appointed on 7.1.1992 initially for four days. After that he was relieved from duty. Thereafter appointment orders and relieving orders were issued from time to time for 3 days, 4 days, etc. and they are Exts.M 11 series. At last w.e.f. 4-9-1992 his services were dispensed with. Altogether he had worked 33 days from 7.1.1992 to 4-9-1992 during a period of 8 months. During the break periods many other temporary workers were engaged. This appointment of the workman cannot be treated as one falling within item No. 10 of Part I of Vth Schedule of the I.D. Act. In order to bring it under item No.10 the service should have been for a pretty long time. In the reported decision the same person was working for 3 years with a break of one day each and nobody else was appointed in his place during the breaks. After his termination the vacancy continued and nobody else was appointed. That is not the position in this case. The workman had worked only for 33 days on leave vacancies during a period of 8 months at different spells. Since his service was for a short period, no bad motive can be alleged for non-renewal of contract. Hence there is no retrenchment u/s-2(OO) of I.D. Act. Therefore it cannot be said that there is any unfair labour practice. Two more decisions relied on by the learned counsel for the workman also differ on facts from the instant case. *MP Bk. Karmachari Sangh* v. *Syndicate Bk. & Anr* 1997 III-L.L.J.(Suppl) 536 was a case in which a casual worker worked for more than 240 days continuously during a

period of one year. He had worked four years altogether. The other case is *Bikki Ram S/o Sh.Lalji* v. *the OP, IT.cum-L. C., Rohtak* 1996 III-L.L.J. (Suppl) 1126. In that case the workman had worked for more than 240 days continuously during an year. Naturally he was entitled for the benefit u/s-25F of I.D. Act. Thus, these two cases also differ from the instant case. The learned counsel had referred to two more decisions reported in *Balbir Singh* v. *Kurushetra Central Coop. Bank Ltd. & Ors.* 1990 I-L.L.J. 443 and *D.H Shirke & Ors. V. Zilla Parishad, Yavatmal & Ors.* 1990 I-L.L.J. 445. In both cases it is observed that since the provision u/s-2 (OO) (bb) is like an exception to S-2 (00) strict construction of S-2 (OO) (bb) should be adopted by Courts and if there is any attempt by the management to exploit an employee by not renewing the contract the provision should be interpreted in favour of the workman. In the light of the above circumstances it cannot be said that there is any unfair labour practice by the management.

9. I have already mentioned that since the workman has not worked for a period of one year or 240 days continuously prior to termination he is not entitled for the benefits u/s-25F of I.D. Act. The question is, what other rights does he get under Bipartite Settlements or under the provisions of Sastry Award or I.D. Act? The Bipartite Settlements do not speak of any right to continue as temporary workman or for regularization. A temporary workman like any other candidate can apply for recruitment to a regular post and if he is qualified he is to be preferred to the general candidate. That alone is provided in the Bipartite Settlements.

10. As per Para 522.4 of Sastry Award a temporary workman is entitled for 14 days' notice before termination of service. The provision reads as follows:

> "The services of an employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 days' notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay (including all allowances)"

The learned counsel for the workman argues that whatever be the nature of appointment, whether for a definite period or for an indefinite period, the workman is entitled for 14 days' notice before termination. But if this argument is accepted it will lead to an embarrassing position. For example, if a workman is appointed initially for two or three days and thereafter the management wants to terminate his services he cannot be given a long notice of 14 days and there is no occasion for giving such a long notice. Hence it follows that a temporary appointment or casual appointment shall be one for an indefinite period in order to claim 14 days' notice. In the instant case the appointment was not for an indefinite period, but for definite periods. The workman has no case that he was working continuously but with some breaks in between different spells. If it is argued that indefinite period is purposely made definite by the management with ulterior motive of depriving the workman of certain benefits, then the further question would arise as to how many of the workers similarly employed on temporary basis in the same leave vacancy or even in a permanent vacancy should be given 14 days' notice to discontinue the service of all of them. However, the evidence go to show that the workman was appointed only for definite periods and it was done in accordance with Para 20.8 of 1st Bipartite Settlement and Federal Bank Bulletin (Para 3). Therefore Para 522.4 of Sastry Award is not applicable to the instant case and the workman is not entitled for 14 days' notice.

11. It was then submitted by the learned counsel for the workman that the workman is entitled to one month's pay and allowances as per Para 524(1) of Sastry Award. It reads :

> "Temporary employees who are engaged for indefinite periods shall be entitled to one month's pay and allowances. Where, however, temporary employees are engaged for definite periods which have been mentioned in their appointment letters, no compensation will be payable."

This provision also will not come to the help of the workman as he was engaged for definite periods. Such persons are not entitled for compensation as per above clause. Exts. M9 to M11 series are appointment orders and relieving orders in respect of the workman. They are for definite periods. Thus the provisions of Sastry Award referred by the learned counsel for the workman are not applicable to this case.

12. It was then contended by the learned counsel for the workman that S-25G and H of I.D. Act are violated by the management. He says so because according to him, while the workman was terminated his juniors were retained. Therefore the rule of 'last come first go' is not followed by the management in the matter of termination. It is to be noted that there was only one permanent bankman in Mannampetta Branch during 1992. Several temporary workmen were employed turn by turn. There is no record to show who was the last to come in order to decide who was the first to go. No doubt, the workman had summoned the 'Register for Temporary Appointments' from the management. The management had produced some documents called for. The Register forTemporary Appointments, Bonus Register and Voucher book were produced, but not marked as they were not tendered in evidence. It is not pointed out that the workman was the first person to be appointed as temporary bankman in Mannampetta branch. If any similar temporary employees were junior to him and who also met with the same fate of termination, one of them could be examined to say that he was appointed subsequent to the appointment of workman in this case. WW2 is the Vice President of the Union. He is quite aware of the situation in the bank. He has not stated

that the workman was the senior-most person among the temporary workers and when the workman was terminated who was retained as temporary bankman and whether that person was junior to the workman. In the absence of any satisfactory evidence, I am unable to say that there is violation of S-25G of I.D. Act.

13. It was then contended that S-25H of I.D. Act is violated. S-25H reads :

> **"Re-employment of retrenched workmen.**—Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

To attract this provision, first of all, the person claiming preference in recruitment should be a retrenched workman. I have already found that the claimant in this case is not a retrenched workman coming within S-2 (oo) of I.D. Act. So S-25H has no application. That apart, the recruitment to fill vacancies of bankmen was made after termination of service of the workman. According to the management (see written statement) the workman had submitted an application in 1994 for recruitment to permanent post. The workman admits that he had submitted applications in 1994 and 1996 for regular recruitment. Exts. M 1 and M 3 are his applications. Thus the worker had applied twice for the post. But the case of the management is that since the workman did not satisfy the conditions with regard to age (over aged) his application was rejected. Ext. M 1 shows that he was 38 years old in 1994. WW2, Union Vice President admits that age and qualification are prescribed for recruitment to permanent post of bankman. But it is contended by the learned counsel for the workman that once an application was forwarded by the Branch Manager to the Head Office, the management cannot any more say that recruitment norms are not satisfied. According to the learned counsel the age and qualification factors should have been scrutinized and screened by the Branch Manager before the application was forwarded to the Head Office. The contention of the learned counsel is without merits as the duty of the Branch Manager is like a post office, to forward the applications received by him to the Head Office. Scrutinizing, screening, etc. are done by the Head Office according to the Recruitment Rules. The management had given opportunity to the workman to apply for the post of bankman. Since he did not conform to the requirements his candidature could not be considered. Hence there is no violation of S-25H of I.D. Act.

Thus, none of the provisions of I.D. Act, Bipartite Settlements or *Sastri* award are violated by the management. Point is answered accordingly.

14. Points No.(2) & (3) :

In view of the above findings it follows that the workman is not entitled for reinstatement or for back wages or for any other relief.

15. In the result, an award is passed finding that the action of the management in terminating the services of Shri K.S. Narayanankutty, Casual Labourer of Mannampetta Branch w.e.f. 4-9-92 is legal and justified and he is not entitled for any relief. The parties will suffer their respective costs. The award will take effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of April, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman :

WW1—Shri K.S. Narayanankutty

WW2—M.O. Phillip.

Witness for the Management :

Nil

Exhibits for the Workman :

Nil.

Exhibits for the Management :

M1 — Application dated 27-4-1994 submitted by the worker for the post of permanent Bankman.

M2 — Notification dated 9-4-1994 issued by Federal Bank inviting applications for recruitment to the post of Bankmen.

M3 — Application dated 19-10-1996 submitted by the worker for the post of permanent Bankman.

M4 — Notification dated 9-4-1994 issued by Federal Bank inviting applications for recruitment to the post of Bankmen.

M5 — Receipt dated 10-1-1992 in r/o wages by the worker.

M6 — Transfer certificate from school in r/o the worker.

M7 — Request of worker for wages as temporary workman.

M8 series —Receipts in r/o wages received by worker.

M9 — Temporary Appointment Order dated 7-1-1992 appointing the worker for 4 days.

M10 — Relieving Order dated 10-1-1992.

M11 series — Appointment and relieving orders.

नई दिल्ली, 9 मई, 2007

का.आ. 1607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. फैडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण इरनाकुलम के पंचाट (संदर्भ संख्या 272/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2007 को प्राप्त हुआ था ।

[सं. एल-12012/256/1994-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1607—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 272/2006) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s. Federal Bank Ltd., and their workman, which was received by the Central Government on 9-5-2007.

[No. L-12012/256/1994/-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.L.B.,
Presiding Officer

(Wednesday the 25th day of April, 2007/5th Vaisakha, 1929)

I.D. 272/2006

(I.D. 5/96 of Labour Court, Ernakulam)

Workman/Union : Shri M.K. Raghu
Madathil House
Mokkannur PO.
Kerala-683 577

Adv. Shri H.B. Sheneoy

Management : The Chairman
M/s. Federal Bank Ltd.
Head Office
Aluva -683 101

Adv. M/s. B.S. Krishnan Associates

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of M/s. Federal Bank Ltd., Alwaye in terminating the service of Sri M. K. Raghu, casual Labour of their Broadway Ernakulam Branch, w.e.f. 30-5-1991 on completion of 46 days service is justified when the casual vacancy continues to be there? If not, to what relief the workman is entitled?"

2. The facts of the case in brief are as follows :—

Shri M. K. Raghu, the workman, was engaged in the Broadway Branch, Ernakulam of Federal Bank as termporary bankman from 30-3-1991 to 30-5-1991. According to the workman the management appointed him against a permanent vacancy of bankman. He was discharging the duties of a permanent bankman. He requested the management to regularize his service. The management instead of considering that request, retrenched the service of the workman. It is in violation of the provisions of I.D. Act and Sastry award. He worked for a total period of 46 days during the period. Juniors to the workman were retained while he was retrenched. After the termination permanent hands were taken and later they were regularised. It is in violation of S-25G & H of I.D. Act as well as Bipartite Settlement. The management is in the habit employing bankmen on temporary basis one after another and terminating them before completion of 85 days with a view to deny them rights and privileges of a permanent employee. No appointment letter or termination letter was given to the workman. The bank is not maintaining service records. The action of the management amounts to unfair Labour practice. The workman is to be reinstated with back wages and other consequential benefits.

3. According to the management the workman was appointed in a temporary vacancy arisen when the permanent hand was on leave and sometimes due to increase in work. He has no right for regularization. The management has not retrenched the workman, but at the end of the period he was relieved of his duties. There is no violation of any of the provisions of I.D. Act, Sastry Award or Bipartite Settlement. The management has not resorted to any unfair labour practice. No juniors were retained at the time of termination of service of workman. He was not posted against a permanent vacancy. The workman had submitted an application on 4-5-1994 for the post of permanent bankman when management notified inviting applications. The workman is not entitled for any relief.

4. In the light of the above contentions the following points arise for consideration :

(1) Is the termination legal?

(2) Is the workman entitled for reinstatement?

(3) Is he entitled for any other relief?

The evidence consists of the oral testimony of WW1 and WW2 on the side of workman and documentary evidence of Exts. M1 to M4 on the side of management. WW2 was examined in a connected case, I.D. 269/2006. There was a petition to read that testimony of WW2 into this case and it stands allowed.

5. Point No. (1):

The claim statement as well as the written statement contains the admission that the workman was appointed as temporary bankman at different spells. But according to the workman he was appointed against a permanent vacancy, while the management contends that it was on leave vacancy and sometimes due to increase in work.

'Temporary employee' is defined in Sastry Award in Para 508 (c) which is applicable to all banks and which was adopted in the Bipartite Settlement and certain provisions sometimes were modified. It reads:

"Temporary employee' means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature."

In the subsequent Desai Award the definition was carried over and later in the 1st Bipartite Settlement dated 19-10-1966 'temporary employee' was defined in Clause 20.7 as follows:

" 'Temporary employee' will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes workman other than a permanent workman who is appointed in temporary vacancy caused by the absence of a particular permanent workman."

It is relevant to note the next clause, 20.8:

"A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the bank shall make arrangements for filling up the vacancy permanently.....".

To the 1st Bipartite Settlement Federal Bank was not a party. They became a party to the 3rd Bipartite Settlement of 1979 only. Clause 1 of 3rd Bipartite Settlement reads as follows:

"In respect of 49 banks listed in Schedule I to this Memorandum of Settlement except State Bank of India, ... it is agreed that the provisions of the Sastry Award and of the Desai Award as modified by the Memorandum of Settlement dated 19th October 1966, 12th October, 1970, 23rd July, 1971 and 8th November, 1973 referred to above shall govern the service conditions except to the extent the same are modified by this settlement."

The definition of 'temporary employee' in 1st Bipartite Settlement is not altered or modified in 3rd Bipartite Settlement. Therefore the same definition contained in Sastry Award and modified by the 1st Bipartite Settlement apply to Federal Bank and its employees. Either as per the provisions of Sastry Award or the provisions of Bipartite Settlement a temporary employee does not get a right to continue in the employment. Certain privileges, like to remain until the juniors are retrenched on the principle of 'Last come first go' and also preference in case of recruitment to permanent posts alone are reserved for them. As a matter of right a temporary employee cannot claim that he is entitled to continue in service or he should be regularized. As per clause 20.8 of 1st Bipartite Settlement temporary appointment shall not exceed 3 months, within which time arrangement has to be made for regular appointment through recruitment. Though as per S-2 (s) of I.D. Act even a temporary employee or a casual employee is a 'workman', he does not get a right for permanency, but only a right u/s-25F of the Act for retrenchment notice and compensation provided he has worked continuously for a period of one year or 240 days prior to his termination. So far as the workman is concerned, admittedly he worked only for 46 days in different spells and that too not continuously during any year, much less prior to his termination. Therefore he is not eligible for the benefit u/s-25F of I.D. Act.

6. The learned counsel for the workman submits that the management is resorting to unfair labour practice by appointing a person on temporary basis at different spells. The intention is to deny such person of the benefits of a permanent employee. He contends that the workman in this case was appointed in a permanent vacancy and the vacancy continued even after his termination. There was no need to give artificial breaks during his service. Hence the intention of the bank was to deprive him of certain benefits due to a permanent employee. The termination therefore is illegal.

7. It is to be noted that the bank does not admit that the workman was appointed in a regular or permanent vacancy. According to the bank he was appointed in leave vacancies sometimes and on other occasions due to increase in work. The workman was examined as WW1. He admits that two permanent bankmen (Varghese & Pailee) were there in Broadway Branch, Ernakulam in 1991. After his termination on 30-5-1991 two persons were appointed as bankmen (Saji & Rajesh). But he does not know whether they were appointed as permanent or temporary workmen and does not say when they were appointed. The bank admits that in 1994 and 1996 applications were called for recruitment to the post of bankmen. Exts. M2 and M3 are notifications. This is not controverted by the workman in his rejoinder. However the bank does not say that a vacancy had arisen in Broadway branch in 1991 or 1994 or 1996. The application were called for filling the vacancies of bankmen that arose all over the branches of Federal Bank. It is for the workman to show that there was vacancy in Broadway branch also in 1991 May or 1994 or 1996. No such proof is tendered by the workman. WW1 admits that

in 1994 he had submitted an applications for recruitment to the permanent post of bankman (Ext. M4). This is not denied by the bank. The bank considered his application, but for over qualification (SSLC) it was rejected. But the workman has no case that a permanent vacancy was there in Broadway branch at the time of his termination in May 1991. Whereas admittedly there were two permanent peons and they continued even after May 1991. Therefore the appointed of the workman from 30-3-1991 to 30-5-1991 could only be in leave vacancy of one of the two permanent bankmen. It is true that similar other workers were employed on temporary basis alternatively. This is done in accordance with para 20.8 of 1st Bipartite Settlement which provides that, temporary appointments shall not exceed a period of 3 months and for further employment the bank shall make arrangements to make regular recruitment.

8. Moreover, the Federal Bank Bulletin dated 23-9-1987 (Para 2) says that in the case of sub-staff, temporary appointment can be made only to a vacancy arising out of long absence/leave of permanent incumbent and not in a vacancy caused by promotion, transfer, retirement, suspension, termination, dismissal, death, etc. It is also provided that as far as possible no temporary appointment shall be made during casual leave vacancies. In para 3 it is stated that temporary appointment shall not be given to a candidate for more than 85 days and at a time not exceeding 10 days. Further paragraphs in the Bulletin says that appointment order an relieving order shall be given to temporary employees, a panel of suitable persons shall be prepared and temporary appointment shall be made only out of the panel, a register called 'the Register for Temporary Appointments' shall be maintained, the names of persons who complete 85 days' temporary service shall be removed from the panel and they shall not be further engaged, etc. It is in compliance with the said clauses in the Bulletin as well as Para 20.8 of 1st Bipartite Settlement that workers are posted as temporary bankmen for a period not exceeding 85 days. The intention may be to avoid claims of temporary employees for regularisation. So far as branches are concerned they are merely following the instructions in the Bulletin as well as as the Bipartite Settlement. The unions are parties to the Bipartite Settlement and they were aware of the position of a temporary bankman and the manner of their appointments in different branches. Still the unions agreed to the terms in Para 20.8 of 1st Bipartite Settlement, according to which the temporary appointment shall not exceed 3 months. But at the same time the workman says that the management is committing unfair labour practice in the matter of temporary appointment. Let me now refer to item No. 10 of Part I of Vth Schedule to I.D. Act which enumerates unfair labour practices :

> "to employee workmen as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workman."

The above provision clarifies that the practice of termprary appintment for several years is to be treated as an unfair labour practice and not temporary appointments for shorter spells. However the learned counsel for the workman, relying on the decision of Madras High Court reported in K. Rajendran v. *Dir (Perslp Pro & Eqp. Cor. of India Limited New Delhi & Anr.* 1995 III-L.L.J. (Suppl) 240, argued that non-renewal of contract shall not be as a weapon against the workman by the management in order to take him out of the purview of retrenchment u/s-2 (oo) of I.D. Act. In the reported case the petitioner in the writ petition was appointed as messenger initially for 44 days and thereafter for different spells with break of one day. He continued to be so appointed for a period of 3 years. Then he was terminated. However the post of messanger continued without anyone else appointed. It was held by the Madras High Court that the intention of the management was to take the workman out of scope of retrenchment u/s-2 (oo) of I.D. Act. It is further observed that S-2 (oo) (bb) is to be strictly construed and if there is any hint of victimization or exploitation of the workman the provision should be interpreted in favour of the workman. In the reported case, considering the factual position there it was held that the termination amounted to retrenchment falling within S-2 (oo) of I.D. Act and an unfair labour practice and therefore the petitioner in that case was entitled for the benefits u/s-25F of the Act. However, on facts the case on hand differs from the reported case. The workman in the present case was appointed on 30-3-1991. He worked under different spells for 46 days altogether. He was relieved from duty on 30-5-1991. His service was for a short period. No bad motive can be attributed for non-renewal of contract in the circumstances of the case. Hence there is no reterenchment u/s-2(oo) of I.D. Act. There is no unfair labour practice also. This appointment of the workman cannot be treated as one falling within item No. 10 of the Vth Schedule of the I.D. Act. In order to bring it under item No. 10 the service should have been for a pretty long time. Whereas in the reported decision the same person was working for 3 years with a break of one day each and nobody else was appointed in his place during the breaks. After his termiantion the vacancy continued and nobody else was appointed. That is not the position in this case and the workman here had worked only for a short period. Two more decisions relied on by the learned counsel for the workman also differ on facts from the instant case. *MP Bk. Karmachari Sangh v. Syndicate Bk. & Anr* 1997 III-L.L.J. (Suppl) 536 was a case in which a casual worker worked for more than 240 days continuously during a period of one year. He had worked four years altogether. The other case is *Bikki Ram S/o Sh. Lalji v.* the *OP,IT.*cum-*L.C., Rohtak* 1996 III-L.L.J. (Suppl) 1126. In that case the workman had worked for more than 240 days continuously during an year. Naturally he was entitled for the benefit u/s-25F of I.D. Act. Thus, these two cases also differ from the instant case. The learned counsel had referred to two

more decisions reported in Balbir Singh v. Kurushetra Central Coop. Bank Ltd. & Ors. 1990I-L.L.J. 443 and D.H. Shirke & Ors. V. Zilla Parishad, Yavatmal & Ors. 1990 I-L.L.J. 445. In both cases it is observed that since the provision U/s-2 (oo) (bb) is like an exception to S-2 (oo) strict construction of S-2 (oo) (bb) should be adopted by Courts and if there is any attempt by the management to exploit an employee by not renewing the contract the provision should be interpreted in favour of the workman. In the light of the above circumstances it cannot be said that there is any unfair labour practice by the management.

9. I have already mentioned that since the workman has not worked for a period of one year or 240 days continuously prior to termination he is not entitled for the benefits U/s 25F of I.D. Act. The question is, what other rights does he get under *Bipartite* Settlements or under the provisions of Sastry Award or I.D. Act? The *Bipartite* Settlements do not speak of any right to continue as temporary workman or for regularization. A temporary workman like any other candidate can apply for recruitment to a regular post and if he is qualified he is to be preferred to general candidate. That alone is provided in the *Bipartite* Settlements.

10. As per Para 522.4 of Sastry Award a temporary workman is entitled for 14 days' notice before termination of service. The provision reads as follows :

> "The services of an employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 days's notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay (including all allowances)."

The learned counsel for the workman argues that whatever be the nature of appointment, whether for a definite period or for an indefinite period, the workman is entitled for 14 days's notice before termination. But if this argument is accepted it will lead to an embarrassing position. For example, if a workman is appointed for two or there days and thereafter if the management wants to terminate his service he cannot be given a long notice of 14 days and there is no occassion for giving such a long notice. Hence it follows that a temporary appointment or casual appointment shall be one for an indefinite period in order to claim 14 days' notice. In the instant case the appointment was not for an indefinite period, but for definite period. The workman has no case that he was working continuously, but with some breaks in between different spells. If it is argued that indifinite period is purposely made definite by the management with ulterior motive of depriving the workman of certain benefits, then the further question would arise as to how many of the workers similarly employed on temporary basis in the same leave vacancy or even in a permanent vacancy should be given 14 day's notice to discontinue the service of all of them. However, the evidence go to show that the workman was appointed only for definite periods and it was done in accordance with Para 20.8 of 1st *Bipartite* Settlement and Federal Bank Bulletin (Para 3). Therefore Para 522.4 of Sastry Award is not applicable to the instant case and the workman is not entitled for 14 day's notice.

11. It was then submitted by the learned counsel for the workman that the workman is entitled to one month's pay and allowances as per Para 524 (1) of Sastry award. It reads :

> "Temporary employees who are engaged for indefinite periods shall be entitled to one month's pay and allowances. Where, however, temporary employees are engaged for definite periods which have been mentioned in their appointment letter, no compensation will be payable."

This provision also will not come to the help of the workman as he was engaged for definite periods. Such persons are not entitled for compensation as per above clause. Thus the provisions of Sastry Award referred by the learned counsel for the workman are not applicable to this case.

12. It was then contended by the learned counsel for the workman that S-25G and H of I.D. Act are violated by the management. He says so because according to him, while the workman was terminated his juniors were retained. Therefore the rule of 'last come first go' is not followed by the management in the matter of termination. It is to be noted that there were two permanent bankmen in Broadway branch during 1991. Several temporary workman were engaged turn by turn. There is no record to show who was the last to come in order to decide who was the first to go. No doubt, the workman had summoned the 'Register for Temporary Appointments' from the management. The management had produced some documents called for and regarding the remaining documents they filed an affidavit saying that Register for Temporary Appointments and some other documents were not traceable and hence were not produced. But it is seen that later the Register of Temporary Appointments and Bonus Register and Voucher book were produced in a connected case (I. D. 274/2006), though not marked. Had the workman been vigilant he could have got extracts of the relevant pages of the register from the connected file and produced it in the present case. There is no evidence before this Court to say that the workman was the first person to be appointed as temporary bankman in Broadway branch. If any of the similar temporary employees were junior to him and who also met with the same fate of termination, one of them could be examined to say that he was appointed subsequent to the appointment of the workman in this case. WW2 is the Vice Present of the Union. He is quite aware of the situation in the bank. He has not stated that the workman was the senior-most person among temporary workers and when the workman was terminated who was retained as temporary bankman and whether that person was junior to the workman. In the

absence of any satisfactory evidence, I am unable to say that there is violation of S-25G of I.D. Act.

13. It was then contended that S-25H of I.D. Act is violated. S-25H reads :

> **"Re-employment of retrenched workmen.**—Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

To attract this provision, first of all, the person Claiming preference in recruitment should be a retrenched workman. I have already found that the claimant in this case is not a retrenched workman coming within S-2 (oo) of I.D. Act. So, S-25H has no application. That apart, the recruitment to fill vacancies of bankmen was made after termiantion of service of the workman. According to the management (see written statement) the workman had submitted an application in 1994 for recruitment to permanent post. The workman admits this and Ext. M4 is his application. But the case of the management is that since the workman did not satisfy the conditions with regard to educational qualification, his application was rejected. WW2 admits that as per recruitment norms age and educational qualification are prescribed. The workman had passed SSLC and it was a disqualification. But it is contended by the learned counsel for the workman that once an application is forwarded by the Branch Manager to the Head Office, the management cannot any more say that recruitment norms are not satisfied. According to the learned counsel the age and eductional qualification factors should have been scrutinized and screened by the Branch Manager before the application was forwarded to the Head Office. The contention of the learned counsel is without merits as the duty of the Branch Manager is like a post office, to forward the applications received by him to the Head Office. Scrutinizing, screening, etc. are done by the head office according to the Recruitment Rules. The management had given opportunity to the workman to apply for the post of bankman. Since he did not conform to the requirements his candidature could not be considered. Hence there is no violation of S-25H of I.D. Act.

Thus, none of the provisions of I.D. Act, *Bipartite* Settlements or Sastri Award are violated by the management. Point is answered accordingly.

14. Points No. (2) & (3) :

In view of the above findings it follows that the workman is not entitled for reinstatement or for back wages or for any other relief.

15. In the result, an award is passed finding that the action of the management in terminating the services of Shri M.K. Raghu., Casual Labourer of Boradway Branch, Ernakulam w.e.f. 30-5-1991 is legal and justified and he is not entitled for any relief. The parties will suffer their respective costs. The award will effect one month after its publication in the official Gazette.

Dicated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of April, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman

WW1-Shri M.K. Raghu

WW2-M. O. Philip.

Witness for the Management :

Nil

Exhibits for the Workman :

Nil.

Exhibits for the Management :

M1 series-	Vouchers for wages paid to M. K. Raghu (8 Nos.)
M2-	Notice dated 9-4-1994 inviting applications for the post of Bankmen.
M3-	Notice dated 10-10-1996 inviting applications for the post of Bankmen.
M4-	Application submitted by M. K. Raghu dated 4-5-1994.

नई दिल्ली, 9 मई, 2007

का.आ. 1608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम के पंचाट (संदर्भ संख्या 225/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2007 को प्राप्त हुआ था ।

[सं. एल-12011/115/1995-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 225/2006) of the Central Government Indusrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India, and their workman, which was received by the Central Government on 9-5-2007.

[No. L-12011/115/1995-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.L.B., Presiding Officer

(Thursday the 26th day of April, 2007/6th Vaisakha, 1929)

I.D. 225/2006

(I.D. 6/97 of Labour Court, Ernakulam)

Workman/Union : The Dy. General Secretary, State Bank of India Union (MC) C/o. S.B.I. Zonal Office P. B. No. 2712 Kochi-682 031

Adv. Shri A.V. Xavier

Management 1. The Dy. General Manager State Bank of India, Zonal Office Ernakulam Kochi-682 031.

2. The Branch Manager State of Bank of India Willingdon Island Branch Kochi-682 031

Adv. Shri George Thomas

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

> " Whether the action of the Dy. General Manager, State Bank of India in withdrawing the special compensatory allowance paid at the rate of Rs. 15 and Rs. 25 per month to sub-staff and clerical staff employees employed in Willington Island, Cochin Port Trust and Overseas Branches w.e.f. 15-1-1995 is justified or not? If not, justified, to what relief the workmen are entitled?"

2. The facts of the case in brief are as follows :—

As per Bipartite Settlement between Union and Banks' Association it was decided to grant special compensatory allowance to employees working in special areas. This facility was extended to Willington Island branches of State Bank of India w.e.f. 1-8-1966. While so, in 1985 the management initiated proceedings to withdraw this benefit. According to the union the attempt was challenged by filing O.P. 7170/85 before Hon'ble High Court of Kerala and obtaining a stay order. Thereafter there was attempt to withdraw the same benefit in Ambalamedu branch. Then another O.P. 8986/85 was filed and a stay order was obtained. In 1987 the management bank withdrew the benefit given in Peechi branch. The union raised an industrial dispute which was referred and adjudicated as I.D. 28/88 by the Industrial Tribunal, Alapuzha. It found that the action of the management was in violation of S-9A of Industrial Disputes Act and terms of Code of Discipline. The O.Ps. were disposed off in view of the award of Industrial Tribunal. The management however, on 15-12-1994 proposed to withdraw the benefit of special compensatory allowance given to the staff of Willington Island branches. A dispute was raised by the union. The matter was conciliated by Assistant Labour Commissioner (Central). The ALC (C) directed the management to keep in obeyance the proposed change. But the management ignoring the direction implemented the proposal w.e.f. 15-1-1995. The order is against the provisions of I.D. Act and Code of Discipline of State Bank of India. The action of the management is illegal and unjustified. The workmen are entitled to the benefit of special compensatory allowance.

3. According to the management the special area allowance can be discontinued as per Clause 9 of 1983 Bipartite Settlement if such benefit is withdrawn in respect of employees of any Central Government establishment in any such places. Since no Central Government office is extending this benefit to its employees in Willington Island the management decided to withdraw the benefit given to the staff of Willington Island branches. A notice u/s-9A of I.D. Act was given before the decision was implemented. The Industrial Tribunal, Alapuzha has not held the action of the withdrawal is illegal, but only found that the prescribed procedure was not followed strictly. The special allowance is given to employees working in arduous stations where there is scarcity of transport, communication facilities, etc. However the situation has improved now. There is more facility in Willington Island. Road, rail and water transport facilities are available in Willington Island. The bus service has increased. It is more difficult to reach Fort Kochi area than Willington Island. Because of the changed situation the management decided to withdraw the benefit. The management is entitled to do so and there is no illegality in their action.

4. In the light of the above contentions, the only point that arises for consideration is :

> "Is the management justified in withdrawing the special compensatory allowance given to the staff of Willington Island branches?"

The evidence consists of the oral testimony of WW1 and documentary evidence of Exts. W1 to 7 on the side of workman and MW1 and Exts. M1 on the side of management.

5. **The Point :**

As per Bipartite Settlement dated 31-3-1967 special compensatory allowance was given to staff of the branches of SBI in Willington Island w.e.f. 1-8-1966. They have been enjoying this benefit for many years. While so, in 1985 the management attempted to withdraw the benefit which

prompted the union to file O.P. before Hon'ble High Court of Kerala and get a stay. Similarly when attempt was made to withdraw the benefit at Peechi branch another O.P. was filed. Then in 1987 management withdrew the benefit in Ambalamedu branch. An industrial dispute was raised and it was adjudicated as I.D. 28/88 by Industrial Tribunal, Alapuzha and Ext. W1 award was passed. The Court found that the management bank had not complied with S-9A of I.D. Act strictly as well as the provision in Code of Discipline of State Bank of India. After the disposal of the I.D., the two O.Ps. pending before Hon'le High Court were disposed off in view of the award passed by Industrial Tribunal, Alapuzha. The benefit of special compensatory allowance was given in pursuance to a settlement between union and management. Therefore, it is contended that by the union that it can be denied only by another settlement. It cannot be disputed the special compensatory allowance was given to the staff of Willington Island branches for a period of 19 years before an attempt was made to withdraw it 1985 and it has become part and parcel of their service conditions. A service condition can be changed only by giving a notice u/s-9A of I.D. Act. Item No. 3 of Fourth Schedule to I.D. Act refers to compensatory and other allowances as a service condition for which notice u/s-9A is required. S-9A reads as follows :

> "9-A. **Notice of change.**—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—
>
> (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
>
> (b) within twenty-one days of giving such notice :"

Thus as per 9A (b) a change in service conditions can be made only on expiry of 21 days after the notice.

Ext. W4 is notice dated 15-12-1994 given to the union. An order was passed withdrawing special compensatory allowance w.e.f. 15-1-1995 as per order, Ext. W5 dated 25-1-1995. Thus the order was implemented only the 30th day after issuance of S-9A notice to the union. The procedure u/s-9A is followed by the management. The question is, will that justify the management to withdraw the benefit? Going by the above Section, after the notice, the management is free to implement its decision. However they should be justified in making a change in the service conditions and cannot act arbitrarily. There is a Code of Discipline applicable to State Bank of India. The relevant extracts of the Code is produced by union and is marked as Ext. W2. Para 34.2(II)(i) reads :

> "that no unilateral action should be taken in connection with any industrial matte and that disputes should be settled at appropriate levels."

This Code of Discipline was made as per agreement between employees and management. Therefore it has to be given meaningful effect while action is taken. If there is any change in service conditions which effect large section of employees the issue has to be conciliated and settled as per the Code of Discipline. But does it mean that if the union is not agreeable to the proposal of the management, the latter is helpless? Not at all. If the situation warrants change and there are justifiable reasons for change they can effect the change. Since notice was given u/s-9A and waited for 21 days and more before issuing an order withdrawing the special benefit, it cannot be said that no opportunity was given to the union either to make representation or negotiate for settlement. Ultimately if conciliation fails even then the management would be justified in implementing its decision provided it is warranted in the circumstances. Therefore, one has to fall back to the original position when the benefit was granted in order to know the reason for granting the special allowance. It is a benefit given to employees working in discomfortable areas where there is scarcity for boarding, lodging, transport, communication, hospital facility etc. In 1966 when the benefit was given it is admitted that the management had taken into consideration the inadequacy of transport facility by road, rail and water in Willington Island. If that position has improved and inconvenience and discomfort are alleviated then there is some justification in withdrawing the benefit. The Vice President of the Union was examined as WW1. According to him, this benefit was given in discomfortable areas because of scarcity of boarding, lodging, transport facility, communication facility, etc. According to him the position has not only not improved, but has deteriorated. He says that there are less trains, less boats and less availability of auto rickshaws and taxis as the airport was shifted to another place. According to him, more buses ply to Fort Kochi area than Willington Island and those buses pass through the outer limits of Willington Island. On the side of the management MW1 was examined. According to him the special compensatory allowance was granted as per Bipartite Settlement considering the transport and residential scarcity. In the cross-examination he admits that ferries from Perumanur boat jetty to Willington Island is now stopped. He also admits that in 1966 many trains were commencing the journey from Willington Island, but not now except 'Tea Garden Express' and 'Shornur Passenger' trains. The management cannot dispute that most of the trains from Ernakulam are now starting from Ernakulam and not from Willington Island. The train facility, therefore, has definitely decreased. The management has not been able to show that road transport facility has increased in proportion to the increase in passengers to Willington Island. So far as ferry service is concerned, admittedly, at least from Perumanur the ferry service to Willington Island is not available. At the same time, the management has not been able to prove that compared to the position in 1966

the boat service has increased. Ext. W3 is produced by the union to show that water transport facility has become worse. Ext. W3 is a news item 'Malayala Manorama' dated 8-9-1998. It is about the pitiable condition of boat service and the protest of passengers. The workmen from Vipeen areas have to cross the ferry to reach Willington Island or else, will have to take a circuitous route through Vallarpadom via Ernakulam to reach Willington Island. Since the airport is shifted to Nedumbasserry no taxis or auto rickshaws are available at the old airport premises in Willington Island. Therefore, the possibility to get a lift or chance of hiring an auto rickshaw from the bus stop near the old airport is also ruled out. However, offices and office goes to Willington Island have increased over years. Except a few star hotels, the lodging facility is almost nil in Willington Island. Such being the situation prevailing in 1995 the management was not justified in withdrawing the benefit. However, if the management wants to implement its proposal it can be done only by a bilateral settlement and not by a unilateral decision like Ext. W5 order.

6. It was contended by the learned counsel for the management that as per Bipartite Supplementary Settlement-II dated 8-9-1983, para 9(a) the special area allowance payable at any place can be discontinued if such allowance (called by any name whatever) ceases to be payable to the employees of the Central Government Ext. M1 is produced to show that in Customs Department no such allowance is given. Ext. M1 is a letter from Customs House, Kochi sent to branch Manager, S.B.I. Stating that no special compensatory allowance has been paid to the employees of the Customs office. On the basis of this letter from Customs House and banking on clause 9(a) of the Bipartite Settlement referred supra the learned counsel for the management submits that the management is perfectly justified in withdrawing the special compensatory allowance given to the employees. It is relevant to note that para 9(a) of 1983 supplementary Settlement refers to a position where Central Government establishment was paying special compensatory allowance for some time and then stopped it. However that provision cannot be interpreted to say that the position of non-payment of the benefit in a Central Government Department (Customs) is much worse than stopping a benefit that was being paid for some time. Clause 9(a) does not convey such a meaning. If for some reasons the benefit was given to the employees for some time and due to changed circumstances it was stopped, then it can be taken as a criterion for the management bank to deny or withdraw the benefit as the circumstances in a particular areas would be similar. Therefore that provision will not come to the rescue of the management. However Ext. W7 on the other hand furthers the case of the union. It is a message from branch Manager, SBI, Willington Island to the Personnel Manager, SBI, Madras. It is mentioned that special compensatory allowance was being paid to the employees of Tea Board a Government Establishment and several nationalised banks in Willington Island. I is also mentioned that initial allowance was enhanced by the Tea Board. Ext. W7 is dated 10-9-1985. The letter also says that such allowance is not given to the employees of Port Trust and Customs. Thus it is clear that some of the government department are giving special compensatory allowance to their employees. It is not shown by the management that Tea Board and other nationalised banks have stopped such benefits so far. If so the SBI is not justified in withdrawing the benefit given to its employees. Point is answered accordingly.

7. In the result, an award is passed finding that the action of the management in withdrawing the special compensatory allowance paid to its employes in Willington Islands branches and Overseas branches in that area is arbitrary, illegal and unjustified. The employees are entitled to get special compensatory allowance with arrears. No cost. The award will taken effect one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 26th day of April, 2007.

P.L. NORBERT, Presiding Officer

APPENDIX

Witness for the workman/union :

WW 1— Cherian Paul—11-12-2002.

Witness for the Management :

MW 1— Shelly—19-2-2003.

Exhibits for the Workman/Union :

W1 — Photostat copy of award in I.D. 28/88 of Industrial Tribunal, Alapuzha.

W2 — Photostat copy of code of Discipline.

W3 — Photostat copy of relevant page of 'Melayala Manorama' daily dated 8-9-1998.

W4 — Photostat copy of notice dated 15-12-1994 reg. change of service conditions issued by SBI, Willington Island Branch.

W5 — Photostat copy of Office Order dated 25-1-1995.

W6 — Memorandum of Settlement dated 14-2-1995.

W7 — Photostat copy of message No. 3448 dated 10-9-1985 from Branch Manager SBI, Willington Island to the Personnel Manager, SBI, Madras.

Exhibits for the Management :

M1 — Letter No. S-44/78/98 Admn. Cus. dated 30-7-1998 issued by Asstt. Chief Accounts Officer, Customs to the Branch Manager, SBI.

नई दिल्ली, 9 मई, 2007

का.आ. 1609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फैडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण इरनाकुलम के पंचाट (संदर्भ संख्या 269/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2007 को प्राप्त हुआ था ।

[सं. एल-12012/196/1994-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1609 —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 269/2006) of the Central Government Indusrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Federal Bank Ltd., and their workman, which was received by the Central Government on 9-5-2007.

[No. L-12012/196/1994-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P. L. Norbert, B.A., L.L.B., Presiding Officer

(Wednesday the 25th day of April, 2007/5th Vaisakha, 1929)

I. D. 269/2006

(I.D. 37/1995 of Labour Court, Ernakulam)

Workman/Union	:	Shri George Simon, Thyparambil House, Thumboli P.O., Alapuzha.
		Adv. Shri H. B. Sheneoy
Management	:	The Chairman, Federal Bank Ltd., Head Office Aluva.
		Adv. M/s. B. S. Krishnan Associate

AWARD

This is a reference made by Central Government under Section 10 (1) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of M/s. Federal Bank Ltd., Alwaye in terminating the service of Sh. George Simon, Casual Labour of their Convent Square Branch, Alleppey w.e.f. 11-3-94 on completion of 83 days service is justified when the casual vacancy continues to be there? If not, to what relief the workman is entitled ?"

2. The facts of the case in brief are as follows :—

Shri George Simon, the workman, was appointed in the Convent Square Branch, Alapuzha of Federal Bank as temporary bankman on 31-10-1992. The management continued to appoint him and relieve him at different spells. The appointment was against a regular vacancy. He was terminated from service on 11-3-1994. He worked for a total period of 83 days from 31-10-1992 to 11-3-1994. While he was terminated from service his juniors were retained. After the retrenchment permanent hands were taken in the vacancy of bankman. Thus the vacancy of bankman continued even after termination of the workman. No notice of termination or retrenchment compensation was given to the workman. The termination is illegal, against Sastry Award, Bipartite Settlements and provisions of I.D. Act. He is entitled for reinstatement with back wages, continuity of service and other consequential benefits.

3. According to the management the workman was appointed in a temporary vacancy when the permanent hand was on leave and sometimes due to increase in work. He has no right for regularization. He was not retrenched. At the end of the period of appointment he was relieved from duty. Hence there is no violation of any of the provisions of I.D. Act, Sastry Award or Bipartite Settlement. No juniors were retained when the workman was terminated. The workman had submitted an application on 25-4-1994 for recruitment to the permanent post of bankman in response to a notification inviting applications. There is no illegality in the action of the management and the workman is not entitled for any relief.

4. In the light of the above contentions the following points arise for consideration :

(1) Is the termination legal ?

(2) Is the workman entitled for reinstatement ?

(3) Is he entitled for any other relief ?

The evidence consists of the oral testimony of WW1 and WW2 on the side of workman and documentary evidence of Exts. M1 to M6 on the side of management.

5. Point No. (1) :

The claim statement as well as the written statement contain the admission that the workman was appointed as temporary bankman at different spells. But according to the workman he was appointed against a permanent vacancy, while the management contends that it was on leave vacancy and sometimes due to increase in work.

'Temporary employee' is defined in Sastry Award in Para 508 (c) which is applicable to all banks and which was adopted in the Bipartite Settlements and certain provisions sometimes were modified. It reads :

" 'Temporary employee' means an employee who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature."

In the subsequent Desai Award the definition was carried over and later in the 1st Bipartite Settlement dated 19-10-1966 'temporary emproyee' was defined in Clause 20.7 as follows :—

" 'Temporary employee' will mean a workman who has been appointed for a limited period for work which is of an essentially temporary nature, or who is employed temporarily as an additional workman in connection with a temporary increase in work of a permanent nature and includes workman other than a permanent workman who is appointed in temporary vacancy caused by the absence of a particular permanent workman."

It is relevant to note the next clause, 20.8 :

"A temporary workman may also be appointed to fill a permanent vacancy provided that such temporary appointment shall not exceed a period of 3 months during which the bank shall make arrangements for filling up the vacancy permanently....."

To the 1st Bipartite Settlement Federal Bank was not a party. They became a party to the 3rd Bipartite Settlement of 1979 only. Clause 1 of 3rd Bipartite Settlement reads as follows :

> "In respect of 49 banks listed in Schedule I to this Memorandum of Settlement except State Bank of India, ...it is agreed that the provisions of the Sastry Award and of the Desai Award as modified by the Memorandum of Settlements dated 19th October 1966, 12th October 1970, 23rd July 1971 and 8th November 1973 referred to above shall govern the service conditions except to the extent that the same are modified by this settlement."

The definition of 'temporary employee' in 1st Bipartite Settlement is not altered or modified in 3rd Bipartite Settlement. Therefore the same definition contained in Sastry Award and modified by the 1st Bipartite Settlement apply to Federal Bank and its employees. Either as per the provisions of Sastry Award or the provisions of Bipartite Settlements a temporary employee does not get a right to continue in the employment. Certain privileges, like to remain until the juniors are retrenched on the principle of 'last come first go' and also preference in case of recruitment to permanent posts, alone are reserved for them. As a matter of right a temporary employee cannot claim that he is entitled to continue in service or he should be regularized. As per clause 20.8 of 1st Bipartite Settlement temporary appointment shall not exceed 3 months, within which time arrangement has to be made for regular appointment through recruitment. Though as per S-2 (s) of I.D. Act even a temporary employee or a casual employee is a 'workman', he does not get a right for permanency, but only a right u/s-25F of the Act for retrenchment notice and compensation provided he has worked continuously for a period of one year or 240 days prior to his termination. So far as the workman is concerned, admittedly he worked only for 83 days in different spells and that too not continuously during any year, much less prior to his termination. Therefore he is not eligible for the benefit u/s-25F of I.D. Act.

6. The learned counsel for the workman submits that the management is resorting to unfair labour practice by appointing a person on temporary basis at different spells. The intention is to deny such person of the benefits of a permanent employee. He contends that the workman in this case was appointed in a permanent vacancy and the vacancy continued even after his termination. There was no need to give artificial breaks during his service. Hence the intention of the bank was to deprive him of certain benefits due to a permanent employee. The tennination therefore is illegal.

7. It is to be noted that the bank does not admit that the workman was appointed in a regular or permanent vacancy. According to the bank he was appointed in leave vacancies sometimes and on other occasions due to increase in work. The workman was examined as WW1. He admits (Pg.4 & 5) that one Shri Ponnappan was the permanent peon of Convent Square Branch, Alapuzha till the termination of the workman and now besides Ponnappan, S/Shri Kannan and Rajendran are also appointed on permanent basis as bankmen. WW1 was examined in 2001. Therefore reference to S/Shri Kannan and Rajendran can only be relating to the period 2001 onwards and not prior to that. Therefore, at the time of termination of the workman there was only one permanent bankman in Convent Square Branch and he was Shri Ponnappan. It is true that in the written statement the bank admits that in 1994 applications were called for recruitment to the post of bankman. This is not controverted by the workman in his rejoinder. However the bank does not say that a vacancy had arisen in Convent Square branch in 1994. The applications were called for filling vacancies of bankmen all over the branches of Federal Bank. It is for the workman to show that there was vacancy in Convent Square Branch also in 1994. No such proof is tendered by the workman. WW1 says in the deposition that in 1996 he had submitted an application for recruitment to the permanent post of bankman. This is not denied by the bank. The bank forwarded applications of temporary employees to the Head Office for consideration. But it is not in evidence as to the branches where vacancies had arisen. The applications called for in 1996 cannot be linked to vacancies in 1994 without proof to that effect. Therefore the workman cannot say that a permanent vacancy was there in Convent Square branch at the time of his termination in 1994. Whereas one Ponnappan was the permanent peon and he continued even after 1994. Therefore the appointment of the workman from 1992 to 94 could only be in leave vacancy of Shri Ponnappan. It is true that similar other workers were employed on temporary basis alternatively. This is done in accordance with Para 20.8 of 1st Bipartite Settlement which provides that, temporary appointments shall not exceed a period of 3 months and for further employment the bank shall make arrangements to make regular recruitment.

8. Moreover, the Federal Bank Bulletin dated 23-9-1987 (Para 2) says that in the case of sub-staff, temporary appointment can be made only to a vacancy arising out of long absence/leave of permanent incumbent and not in a vacancy caused by promotion, transfer,

retirement, suspension, termination, dismissal, death, etc. It is also provided that as far as possible no temporary appointment shall be made during casual leave vacancies. In Para 3 it is stated that temporary appointment shall not be given to a candidate for more than 85 days and at a time not exceeding 10 days. Further paragraphs in the Bulletin says that appointment order and relieving order shall be given to temporary employees, a panel of suitable persons shall be prepared and temporary appointments shall be made only out of the panel, a register called 'the Register for Temporary Appointments' shall be maintained, the names of persons who complete 85 days' temporary service shall be removed from the panel and they shall not be further engaged, etc. It is in compliance with the said clauses in the Bulletin as well as Para 20.8 of 1st Bipartite Settlement that workers are posted as temporary bankmen for a period not exceeding 85 days. The intention may be to avoid claims of temporary employees for regularisation. So far as branches are concerned they are merely following the instructions in the Bulletin as well as the Bipartite Settlement. The unions are parties to the Bipartite Settlement and they are aware of the position of a temporary bankman and the manner of his appointment. Still the unions agreed to the terms in Para 20.8 of 1st Bipartite Settlement, according to which the temporary appointment shall not exceed 3 months. But at the same time the workman says that the management is committing Unfair Labour Practice in the matter of temporary appointments. Let me now refer to item No. 10 of Part I of Vth Schedule to I.D. Act which enumerates unfair labour practice:

> "to employ workmen as badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

The above provision clarifies that the practice of temporary appointment for several years is to be treated as an unfair labour practice and not temporary appointments for shorter spells. However the learned counsel for the workman, relying on the decision of Madras High Court reported in K. Rajendran v. Dir. (Pers.) Pro & Eqp. Cor. of India Limited New Delhi and Anr. 1995 III-L.L.J.(Suppl) 240, argued that non-renewal of contract shall not be used as a weapon against the workman by the management in order to take him out of the purview of retrenchment u/s-2 (oo) of I.D. Act. In the reported case the petitioner in the writ petition was appointed as messenger initially for 44 days and thereafter for different spells with a break of one day. He continued to be so appointed for a period of 3 years. Then he was terminated. However the post of messenger continued without anyone else appointed. It was held by the Madras High Court that the intention of the management was to take the workman out of scope of retrenchment u/s-2 (00) of I.D. Act. It is further observed that S-2 (oo) (bb) is to be strictly construed and if there is any hint of victimization or exploitation of the workman the provision should be interpreted in favour of the workman. In the reported case, considering the factual position there it was held that the termination amounted to retrenchment falling within S-2 (oo) of I.D. Act and an unfair Labour practice and therefore the petitioner in that case was entitled for the benefits u/s-25F of the Act. However, on facts, the case on hand differs from the reported case. The workman in the present case was appointed on 9-11-1992 initially for one day. After that days' work he was relieved from duty. Thereafter appointment orders and relieving orders were issued from time to time and these are Exts.M3 to M6. At last w.e.f. 11-3-1994 his services were dispensed with. Altogether he had worked 83 days from 31-10-1992 to 11-3-1994 during a period of 17 months. During the break periods many other temporary workers were engaged in the same post. This appointment of the workman cannot be treated as one falling within item No.10 of Vth Schedule of the I.D. Act. In order to bring it under item No. 10 the service should have been for a pretty long time. Whereas in the reported decision the same person was working for 3 years with a break of one day each and nobody else was appointed in his place during the breaks. After his termination the vacancy continued and nobody else was appointed. That is not the position in this case. The workman had worked only for 83 days on leave vacancies during a period of 17 months at different spells. Since his service was only for a short period no bad motive can be alleged for non-renewal of contract. Hence there is no retrenchment us-2(oo) of I.D. Act. Therefore it cannot be said that there is any unfair labour practice. Two more decisions relied on by the learned counsel for the workman also differ on facts from the instant case. MP Bk. Karmachari Sangh v. Syndicate Bk. & Anr 1997 III-L.L.J.(Suppl) 536 was a case in which a casual worker worked for more than 240 days continuously during a period of one year. He had worked four years altogether. The other case is Bikki Ram S/o Sh.Lalji v. the OP, IT.cum-L.C., Rohtak 1996 III-L.L.J. (Suppl) 1126. In that case the workman had worked for more than 240 days continuously during an year. Naturally he was entitled for the benefit u/s-25F of I.D. Act. Thus, these two cases also differ from the instant case. The learned counsel had referred to two more decisions reported in Balbir Singh v. Kurushetra Central Coop. Bank Ltd. & Ors. 1990 I-L.L.J. 443 and D.H Shirke & Ors. V. Zilla Parishad, Yavatmal & Ors. 1990 I-L.L.J. 445. In both cases it is observed that since the provision u/s-2 (oo) (bb) is like an exception to S-2 (oo) strict construction of S-2 (oo) (bb) should be adopted by Courts and if there is any attempt by the management to exploit an employee by not renewing the contract the provision should be interpreted in favour of the workman. But in facts and circumstances of the present case it cannot be said that the management has committed any unfair labour practice.

9. I have already mentioned that since the workman has not worked for a period of one year or 240 days continuously prior to termination he is not entitled for the benefits u/s-25F of I.D. Act. The question is, what other rights does he get under Bipartite Settlement or under the provisions of Sastry Award or I.D. Act? The Bipartite Settlements do not speak of any right to continue as

temporary workman or for regularization. A temporary workman like any other candidate can apply for recruitment to a regular post and if he is qualified he is to be preferred to the general candidate That alone is provided in the Bipartite Settlement.

10. As per Para 522.4 of Sastry Award a temporary workman is entitled for 14 days' notice before termination of service. The provision reads as follows :

> "The services of an employee other than a permanent employee or probationer may be terminated, and he may leave service, after 14 days' notice. If such an employee leaves service without giving such notice he shall be liable for a week's pay (including all allowances)"

The learned counsel for the workman argues that whatever be the nature of appointment, whether for a definite period or for an indefinite period, the workman is entitled for 14 days' notice before termination. But if this argument is accepted it will lead to an embarrassing position. For example, the workman in this case was appointed initially for one day only. If the management wanted to terminate his services after a day's work he cannot be given a long notice of 14 days' and there is no occasion for giving such a long notice. Hence it follows that a temporary appointment or casual appointment shall be one for an indefinite period in order to claim 14 days' notice. In the instant case the appointment was not for an indefinite period, but for definite periods. The workman has no case that he was working continuously. He admits that he was appointed at different spells with breaks and different persons were employed during such breaks. If it is argued that indefinite period is purposely made definite by the management with ulterior motive of depriving the workman of certain benefits, then the further question would arise as to how many of the workers similarly employed on temporary basis in the same leave vacancy or even in a permanent vacancy (but only one vacancy) should be given 14 days' notice to discontinue the service of all of them. However, the evidence go to show that the workman was appointed only for definite periods and it was done in accordance with Para 20.8 of 1st Bipartite Settlement and Federal Bank Bulletin (Para 3). Therefore Para 522.4 of Sastry Award is not applicable to the instant case and the workman is not entitled for 14 days' notice.

11. It was then submitted by the learned counsel for the workman that the workman is entitled to one month's pay and allowances as per Para 524(1) of Sastry Award. It reads :

> "Temporary employees who are engaged for indefinite periods shall be entitled to one month's pay and allowances. Where, however, temporary employees are engaged for definite periods which have been mentioned in their appointment
>
> letters, no compensation will be payable."

This provision also will not come to the help of the workman as he was engaged for definite periods. Such persons are not entitled for compensation as per the above clause. Exts. M3 to M6 are appointment orders and relieving orders in respect of the workman. They are for definite periods. Thus the provisions of Sastry award referred by the learned counsel for the workman are not applicable to this case.

12. It was then contended by the learned counsel for the workman that S-25G and H of I.D. Act are violated by the management. He says so because according to him, while the workman was terminated his juniors were retained. Therefore the rule of 'last come first go' is not followed by the management in the matter of termination. It is to be noted that there was only one permanent bankman in Convent Square Branch during 1992-94 till a regular recruitment was made for additional hands. During his absence several temporary employees including the workman were engaged turn by turn. There is no record to show who was the last to come in order to decide who was the first to go. No doubt, the workman had summoned the 'Register for Temporary Appointments' from the management. The management had produced some documents called for and regarding the remaining documents they filed an affidavit saying that Register for Temporary Appointments and some other documents were not traceable and hence were not produced. But it is seen that later the Register for Temporary Appointments, Bonus Register and Voucher book were produced in a connected case, (I. D. 274/2006), though not marked. Had the workman been vigilant he could have got extracts of the relevant pages of the register from the connected file and produced it in the present case. There is no evidence before this Court to say that the workman was the first person to be appointed as temporary bankman in Convent Square branch. If other temporary employees appointed by the bank were junior to him and who also had met with the same fate of termination, one of them could be examined to say that he was appointed subsequent to the appointment of workman. WW2 is the Vice President of the Union. He is quite aware of the situation in the bank. He has not stated that the workman was the senior-most person among the temporary workers and when the workman was terminated who was retained as temporary bankman and whether that person was junior to the workman. In the absence of any satisfactory evidence, I am unable to say that there is violation of S-25G of I. D. Act.

13. It was then contended that S-25H of I.D. Act is violated. S-25H reads :

> "**Re-employment of retrenched workmen.**—Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons."

To attract this provision, first of all, the person claiming preference in recruitment should be a retrenched workman. I have already found that the claimant in this case is not a retrenched workman coming within S-2 (oo) of I.D. Act. So S-25H has no application. That apart, the recruitment to fill vacancies of bankmen was made after termination of service of the workman. According to the management (see written statement) the workman had submitted an application in 1994 for recruitment to permanent post. The workman's case that he had submitted the application in 1996, is not denied by the management. Thus the worker had applied twice for the post. But the case of the management is that since the workman did not satisfy the conditions with regard to age and educational qualification, his application was rejected. WW1 admits that he was over-aged when he had submitted the application and because of that his application was rejected (Pg. II). WW2 admits that age and educational qualification are prescribed for recruitment to permanent post of bankman. But it is contended by the learned counsel for the workman that once an application was forwarded by the Branch Manager to the Head Office, the management cannot any more say that the candidate does not conform to recruitment norms. According to the learned counsel the age and qualification factors should have been scrutinized and screened by the Branch Manager before the application was forwarded to the Head Office. The contention of the learned counsel is without merits as the duty of the Branch Manager is like a post office, to forward the applications received by him to the Head Office. Scrutinizing, screening, etc. are done by the head office according to the Recruitment Rules. The management had given opportunity to the workman to apply for the post of bankman. Since he did not conform to the requirements his candidature could not be considered. Hence there is no violation of S-25H of I.D. Act.

Thus, none of the provisions of I.D. Act, Bipartite Settlements or Sastri Award are violated by the management. Point is answered accordingly.

14. Points No. (2) and (3):

In view of the above findings it follows that the workman is not entitled for reinstatement or for back wages or for any other relief.

15. In the result, an award is passed finding that the action of the management in terminating the services of Shri George Simon, Casual Labourer of Convent Square Branch, Alleppey w.e.f. 11-3-94 is legal and justified and he is not entitled for any relief. The parties will suffer their respective costs. The award will take effect one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of April, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Workman

WW1—Shri George Simon

WW2—M. O. Phillip.

Witness for the Management :

Nil.

Exhibits for the Workman :

Nil.

Exhibits for the Management :

M1— Copy of forwarding letter dated 22-10-1996 forwarding applications received from 14 candidates for the post of Bankman from the Regional Office to Head Office, Aluva.

M2— Copy of letter dated 31-10-1992 written by Shri George Simon to the Manager, Federal Bank, Convent Square branch, Federal Bank regarding his application dated 31-10-1992.

M3— Copy of temporary appointment order dated 9-11-1992 in r/o worker.

M4— Copy of relieving order dated 9-11-1992.

M5— Copy of temporary appointment order dated 7-3-1994 in r/o the worker.

M6— Copy of relieving order dated 11-3-1994.

नई दिल्ली, 9 मई, 2007

का.आ. 1610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-I, नई दिल्ली के पंचाट (संदर्भ संख्या 43/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2007 को प्राप्त हुआ था ।

[सं. एल-12012/467/1999-आई आर (बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1610—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 43/2000) of the Central Government Indusrial Tribunal/Labour Court-I, New Delhi now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 9-5-2007.

[No. L-12012/467/1999-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI SANT SINGH BAL, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, NEW DELHI

I.D. No. 43/2000

In the matter of dispute between :

Shri Subhash Chawla
Ex-Clerk-cum-Typist,
Resident of - A - 3,
Kaushambi, P.O. Sahibabad,
Distt. Ghaziabad (UP) 201010 ...Workman

Versus

The Managing Director,
State Bank of India,
Head Office, The Mall,
Patiala-147001. ...Management

Appearances :

None for the workman.

Shri Narinder Pal Advocate A/R for Mgt.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/467/99-IR(B-I) dated 24-3-2000 has referred the following Industrial Dispute to this Tribunal for adjudication :

> "Whether the action of the management of State Bank of Patiala in treating alleged unauthorized absence as Deemed to have voluntary retired from services by Shri Subhash Chawla, Ex-Clerk-cum-Typist w.e.f. 24-6-96 vide order dated 20-6-98 without domestic enquiry is just, fair & legal? If not, to what relief he is entitled to and from which date?"

2. Brief facts of this case as culled from record are that the workman was treated as voluntarily retired by the management w.e.f. 24-6-96 vide order dated 20-6-98 for remaining unauthorisedly absent. He was given notice of the reference. He filed statement of claim challenging the order of the management.

3. Claim was contested by the management.

4. Workman filed rejoinder controverting the facts mentioned in the written statement and reiterating his claim statement.

5. After filing of documents the case was posted for evidence of the workman. Workman was partly examined on 5-7-2006 and thereafter case was adjourned for cross examination of the workman on various dates i.e. 25-2-2002, 22-4-2002, 8-7-2002, 5-11-2002, 17-12-2002, 6-3-2003, 30-4-2003, 16-7-2003, 23-10-2003, 22-12-2003, 18-2-2004, 3-5-2004, 5-5-2004, 3-8-2004, 28-7-2005, 7-11-2005, 24-1-2006, 24-4-06, 5-7-2006, 12-9-2006, 12-12-06, 12-3-2007 but ultimately workman was given last opportunity for his appearance and cross of workman for 30-4-2007. Today also neither the workman nor his A/R has appeared. It appears that the workman is not interested in the prosecution of his claim which gives rise to the presumption that he does not dispute action of the management. Hence, No Dispute Award is accordingly passed. File be consigned to record room.

Dated : 30-4-07 SANT SINGH BAL, Presiding Officer

नई दिल्ली, 9 मई, 2007

का.आ. 1611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जोधपुर के पंचाट (संदर्भ संख्या 4/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-5-2007 को प्राप्त हुआ था ।

[सं. एल-41012/136/2002-आई आर (बी-I)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 4/2003) of the Indusrial Tribunal/Labour Court Jodhpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 9-5-2007.

[No. L-41012/136/2002-IR (B-I)]
AJAY KUMAR, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :

श्री पुष्पेन्द्र सिंह हाड़ा, आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) सं. : 4/2003

श्री नाराणा
पुत्र श्री लाखा
मार्फत सेक्रेट्री अखिल भारतीय मजदूर महासंघ,
1-पी 4 मधुबन बासनी हाऊसिंग बोर्ड,
जोधपुर । .... प्रार्थी

बनाम

महाप्रबन्धक,
उत्तर रेलवे बड़ोदा हाऊस,
नई दिल्ली वर्तमान उत्तर पश्चिम रेलवे,
जयपुर । .... अप्रार्थी

रेफरेन्स अर्न्तगत धारा 10 औद्योगिक विवाद अधिनियम, 1947

उपस्थिति :

(1) सुश्री बीना भाटी प्रतिनिधि प्रार्थी
(2) श्री अनिल त्रिवेदी प्रतिनिधि अप्रार्थी

अवार्ड

दिनांक 19-1-2007

1. भारत सरकार ने अपनी अधिसूचना क्रमांक एल.-41012/136/2002(आई.आर. (बी-1) दिनांक 24/31-12-2002 द्वारा निम्न विवाद अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947 के तहत इस न्यायालय को रेफर किया है :-

> "क्या महाप्रबंधक, उत्तर रेलवे, बड़ोदा हाऊस, नई दिल्ली एवं मण्डल रेल प्रबन्धक, उत्तर रेलवे, जोधपुर के द्वारा कर्मकार श्री नाराणा, पुत्र श्री लाखा, एक्स गेंगमेन को दिनांक 21-2-97 से विभागीय अनुशासनात्मक कार्यवाही कर रेल सेवा से बर्खास्त करना उचित एवं वैध है? यदि नहीं, तो कर्मकार अपने नियोजक से क्या राहत पाने का अधिकारी है ?"

2. प्रार्थी ने अपना मांग-पत्र इस आशय का प्रस्तुत किया कि प्रार्थी गेंगमैन के पद पर रेल पथ निरीक्षक बालोतरा उत्तर पश्चिम रेलवे, मण्डल जोधपुर में दिनांक 24-8-1983 से स्थाई पद पर नियुक्त हुआ, प्रार्थी दिनांक 13-5-89 को बीमारी का मीमो जी-92 रेल पथ निरीक्षक, बालोतरा से लेकर स्वास्थ्य केन्द्र, समदड़ी ईलाज के लिए गया, जहां 5 दिन का अस्वस्थ प्रमाण-पत्र देकर चिकित्सा जांच में रखा जिसकी सूचना प्रार्थी ने अप्रार्थी को दी, प्रार्थी लगातार ईलाज कराने पर भी ठीक नहीं हुआ तो रेलवे डाक्टर ने कहा कि दिनांक 18-7-89 को आकर फिट ले जाना, प्रार्थी 18-7-89 को स्टेशन मास्टर, जानियाना से चिकित्सा पास लेकर समदड़ी रेलवे डाक्टर के पास हाजरी देने उपस्थित हुआ तो ईलाज की सिक लिस्ट से डिस्चार्ज कर दिया, प्रार्थी को अंधा वाला रोग था इसलिये आर्युवेध चिकित्सालय, बाडमेर से ईलाज मे रहा, प्रार्थी की पत्नी व खुद की बीमारी के कारण मानसिक सन्तुलन भी बिगड़ गया, प्रार्थी को महात्मा गांधी अस्पताल ले गये जहां प्रार्थी का 2-12-91 से 4-12-91 तक ईलाज चला तत्पश्चात् 18-4-91 से 23-4-91 तक ईलाज चला, प्रार्थी को आयुर्वेध चिकित्सालय बाड़मेर के वैद्य ने स्वस्थ होने पर 18-7-89 से 10-4-92 का अस्वस्थ्य व स्वास्थ्य प्रमाण-पत्र दिया, जो लेकर प्रार्थी 10-4-92 को रेल पथ निरीक्षक, बालोतरा के समक्ष उपस्थित हुआ जिस पर उसे जवाब दिया कि उसे नौकरी से हटा दिया। अप्रार्थी विभाग द्वारा 27-8-96 को आरोप-पत्र प्रार्थी को दिया, उक्त आरोप-पत्र अवैध था जिसके आधार पर दिनांक 17-10-96 को विभागीय आन्तरिक जांच को अधिकृत जांच अधिकारी नियुक्त किया। जांच अधिकारी की रिपोर्ट पर प्रार्थी को 21-2-97 से रेल सेवा से बरखास्त कर दिया गया जिसके विरुद्ध प्रार्थी ने अपील प्रस्तुत की जो खारिज कर दी गई जिस पर प्रार्थी ने 17-4-2001 को औद्योगिक विवाद प्रस्तुत किया, श्रम विभाग अजमेर द्वारा 18-7-2002 को असफल वार्ता प्रतिवेदन श्रम मंत्रालय, भारत सरकार को प्रेषित किया। अप्रार्थी द्वारा प्रार्थी को अवैध आरोप-पत्र व मनमाने ढंग से जल्दबाजी में बिना गवाह के संचालन के की गई। जांच नैसर्गिक न्याय के सिद्धांतों के विरुद्ध है अत: प्रार्थी को आरोप से दोषमुक्त किया जाकर सेवा पृथकता के आदेश को रद्द किया जावे व 18-7-89 से 10-4-92 तक की चिकित्सा अवकाश तथा नियमित सेवा तिथि से रेल सेवा में सवैतनिक बहाल करने का आदेश पारित किया जावे।

3. अप्रार्थी की ओर से जवाब में कहा गया है कि अप्रार्थी विभाग इण्डस्ट्रीज की परिभाषा में नहीं आता है। प्रार्थी का मामला निरन्तर बिना सूचित किये, अनाधिकृत रूप से अनुपस्थित रहने के कारण विधिपूर्वक नोटिस देकर एवं जांच एवं नियमानुसार निर्धारित प्रक्रिया अपनाकर विभागीय जांच कर अनुशासनात्मक अधिकारी द्वारा दण्डादेश पारित कर प्रार्थी को सेवा से पृथक किया गया है। प्रार्थी ने सेवापृथक के आदेश के विरुद्ध अपील व रिव्यु प्रार्थना-पत्र प्रस्तुत किये जो अस्वीकार किये जा चुके हैं अत: अधिनियम 10, 1947 के तहत रेफरेंस पोषणीय नहीं है। प्रार्थी ने 13-5-89 से 5 दिन का रोग प्रमाण-पत्र प्राप्त किया था। 18-7-89 को रेलवे डॉक्टर ने प्रार्थी को डिस्चार्ज कर स्वस्थ प्रमाण-पत्र ले जाने हेतु कहा था किन्तु प्रार्थी ड्यूटी पर नहीं आया व बिना किसी प्रकार की सूचना दिये दिनांक 18-7-89 चार्जशीट जारी करने की दिनांक 27-8-96 तक अनाधिकृत रूप से निरन्तर अनुपस्थित रहा। रेल पथ निरीक्षक, बालोतरा द्वारा पुन: उपस्थित होने बाबत दिये गये नोटिस का भी प्रार्थी ने कोई उत्तर नहीं दिया। अत: वाद विभागीय जांच स्वेच्छिक अनुपस्थिति के कारण प्रार्थी की सेवापृथकता का आदेश वैध व प्रभावी है। रेल विभाग ने अपने यहां कार्यरत कर्मचारियों के स्वास्थ्य की देखभाल हेतु व उचित चिकित्सा परामर्श हेतु रेलवे अस्पताल की व्यवस्था की हुई है किन्तु प्रार्थी ने रेलवे अस्पताल में ईलाज न करवाकर रेलवे विभाग के विभागीय चिकित्सक द्वारा अन्य अस्पताल में रेफर किये बिना व अपनी मनमर्जी से अन्यत्र ईलाज करवाया हो, यह गलत है। वास्तव में प्रार्थी 18-7-89 से 27-8-96 तक बिना कारण बिना सूचित किये स्वेच्छा से अनुपस्थित रहा। प्रार्थी 10-4-1992 को पुन: कार्यालय में उपस्थित नहीं हुआ। प्रार्थी को 27-8-1996 को आरोप-पत्र दिया गया लेकिन प्रार्थी ने उसका कोई जवाब प्रस्तुत नहीं किया। मुख्य रेल पथ निरीक्षक द्वारा नियुक्त जांच अधिकारी श्री डी. के. गोस्वामी पी. डब्ल्यू. आई., बालोतरा द्वारा प्रस्तुत जांच रिपोर्ट के आधार पर ही सक्षम अधिकारी द्वारा प्रार्थी के विरुद्ध कार्यवाही की गई। प्रार्थी के विरुद्ध की गई विभागीय जांच नियमानुसार की गई है। प्रार्थी को सेवा से पृथक करने का आदेश नियमों व नैसर्गिक नियमों की पालना करते हुए पारित किया गया है जो वैध व प्रभावी है। दण्डादेश पूर्ण रूप से विधि सम्मत व प्रभावी है। प्रार्थी किसी अनुतोष का अधिकारी नहीं है। प्रार्थी का मांग-पत्र सव्यय खारिज किया जावे।

4. मांग पत्र के समर्थन में प्रार्थी ने स्वयं का शपथ-पत्र मांग पत्र में अंकित तथ्यों को दोहराते हुए प्रस्तुत किया जिस पर अप्रार्थी प्रतिनिधि द्वारा जिरह की गई तथा अप्रार्थी की ओर से राजीव गुप्ता का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रार्थी प्रतिनिधि द्वारा जिरह की गई।

5. दोनों पक्षों के प्रतिनिधिगण की बहस सुनी गई। पत्रावली का अवलोकन किया गया।

6. प्रार्थी ने अपनी साक्ष्य में मांग-पत्र में बताये गये तथ्यों को दोहराया है व यह स्वीकार किया है कि अप्रार्थी विभाग द्वारा उसके विरुद्ध विभागीय जांच की गई एवं विभागीय जांच के निर्णय के विरुद्ध उसके द्वारा अपील भी की गई जो निरस्त हो गई। प्रार्थी ने अपनी साक्ष्य में जांच नियमानुसार न किया जाना व नैसर्गिक न्याय के सिद्धान्तों के विपरीत किया जाना बताया है। जिरह में प्रार्थी ने यह स्वीकार किया है कि 18-7-89 से वह नौकरी पर नहीं गया। वह गैंगमैन के स्थाई पद पर नियुक्त था व उसे 1000 रुपये वेतन मिलता था। जिरह में उसने यह भी कहा है कि प्रदर्श-1 आरोप-पत्र उसे मिला हो तो ध्यान नहीं परन्तु बाद में यह स्वीकार किया है कि

प्रदर्श-1 पर ए टू बी हस्ताक्षर उसके हैं । उसने प्रदर्श-2 आदेश एवं प्रदर्श-3 के बारे में अनभिज्ञता प्रकट की है परन्तु यह स्वीकार किया है कि जांच अधिकारी गोस्वामी जी के समक्ष वह उपस्थित हुआ था व उन्होंने उससे पूछताछ करी थी, प्रदर्श-6 प्राप्त रसीद पर उसने अपने हस्ताक्षर होना स्वीकार किया है । इसी प्रकार प्रदर्श-7 दण्डादेश मिलना भी उसने स्वीकार किया है । प्रदर्श-9 अपील आदेश मिलना उसने स्वीकार किया है ।

7. अप्रार्थी विभाग की ओर से श्री राजीव गुप्ता, सहायक मण्डल अभियन्ता, उत्तर-पश्चिम रेलवे ने इस आशय की साक्ष्य दी है कि प्रार्थी ने 13-5-89 को पांच दिन का रोग प्रमाण-पत्र दिया था, इसके बाद 18-7-89 को रेलवे डॉक्टर ने प्रार्थी को डिस्चार्ज कर फिटनेस प्रामण-पत्र ले जाने को कहा था किन्तु प्रार्थी ड्यूटी पर नहीं आया, प्रार्थी बिना किसी प्रकार की सूचना दिये 18-7-89 से चार्जशीट जारी करने की दिनांक 27-8-96 तक अनाधिकृत रूप से निरन्तर अनुपस्थित रहा । पुनः उपस्थित होने बाबत दिये गये नोटिस का भी कोई प्रति उत्तर नहीं दिया । प्रार्थी 18-7-89 को पूर्णतः स्वस्थ था । प्रार्थी के लिए रेलवे अस्पताल में ईलाज कराया जाना आवश्यक था या रेलवे हॉस्पीटल से रेफर कराकर अन्यत्र ईलाज कराया जाना चाहिये था जो उसने नहीं किया न ही उसकी अनुपस्थिति के दौरान उसने कोई अवकाश स्वीकृत करवाया । उसकी अनुपस्थिति के दौरान उसे कई बार नोटस दिये गये परन्तु प्रार्थी की ओर से कोई जवाब, अवकाश प्रार्थना-पत्र या रोग प्रमाण-पत्र प्रस्तुत नहीं किया गया । इतने लम्बे समय की स्वैच्छिक अनुपस्थिति के कारण प्रार्थी को 27-8-96 को चार्जशीट दी गई व श्री डी. के. गोस्वामी, पी.डब्ल्यू. आई. बालोतरा को जांच अधिकारी नियुक्त किया गया । जांच की समस्त कार्यवाही की सूचना प्रार्थी को समय-समय पर दी गई व उसे उपस्थित होने का व जांच में भाग लेने का पर्याप्त अवसर दिया गया । रेलवे के नियमानुसार जांच की जाकर प्रार्थी को दण्डित किया जाकर उसकी सेवा समाप्त की गई ।

8. प्रार्थी स्वयं ने यह स्वीकार किया है कि अप्रार्थी विभाग ने उसके विरुद्ध विभागीय जांच की थी, जिरह में उसने यह स्वीकार किया है कि 18-7-89 के बाद वह नौकरी पर नहीं गया । स्थाई कर्मचारी होने की स्थिति में अनुपस्थित रहने की स्थिति में उसके द्वारा अवकाश स्वीकृत कराया जाना आवश्यक था । अप्रार्थी विभाग द्वारा जो दस्तावेज प्रस्तुत किये गये हैं उनमें से अधिकांश दस्तावेज प्रार्थी स्वयं ने अपनी जिरह में स्वीकार किये हैं । प्रार्थी द्वारा ऐसा कोई दस्तावेज प्रस्तुत नहीं किया गया है जिससे यह प्रकट हो कि उसने अवकाश हेतु प्रार्थना-पत्र दिया था जिसे बिना किसी उचित कारण के अस्वीकार कर दिया गया हो। प्रार्थी स्वयं ने अपने मांग-पत्र में यह बताया है कि 13-5-89 को पांच दिन का रोग प्रमाण-पत्र उसने लिया था व 18-7-89 को रेलवे डॉक्टर ने प्रार्थी को डिस्चार्ज कर फिटनेस प्रमाण-पत्र ले जाने हेतु कहा था । ऐसी स्थिति में दिनांक 18-7-89 के बाद यदि वह अनुपस्थित रहा है तो उसके विरुद्ध विभागीय जांच किये जाने का उचित कारण था । विभागीय जांच में उसे प्रदर्श-1 चार्जशीट दी गई एवं उसके विरुद्ध जो आरोप थे उसका आरोप-पत्र भी दिया गया । जांच के लिए आदेश प्रदर्श-2 द्वारा जांच अधिकारी श्री डी. के गोस्वामी की नियुक्ति की गई । जांच के दौरान प्रार्थी द्वारा जो कथन किये गये वे प्रदर्श-4 के अनुसार रिकार्ड किये गये, उसे साक्ष्य प्रस्तुत करने का भी पर्याप्त अवसर दिया गया, इसके पश्चात् दण्डादेश प्रदर्श-7 पारित किया गया एवं दण्डादेश के विरुद्ध पारित अपील प्रदर्श-10 द्वारा निरस्त की गई । प्रार्थी ऐसा कोई कारण नहीं बता पाया है जिससे यह माना जा सके कि अप्रार्थी विभाग द्वारा उक्त जॉच रेल सेवा अनुशासन एवं अपील नियम, 1968 में विभागीय जांच हेतु प्रक्रिया के अनुसार नहीं की गई हो । प्रार्थी को आरोप-पत्र दिया गया है व आरोपों का विवरण दिया गया है । उसे बचाव का पर्याप्त अवसर भी जांच के दौरान दिया गया है । ऐसी स्थिति में यह माने जाने का कोई कारण नहीं है कि उक्त जॉच नैसर्गिक न्याय के सिद्धान्तों के विपरीत की गई हो ।

9. प्रार्थी ने यह तर्क लिया है कि 18-7-89 के बाद भी बीमार होने से उसने देशी दवाखाना बाड़मेर में ईलाज करवाया जिसका 18-7-89 से 10-4-92 का रोग प्रमाण-पत्र/फिटनेस प्रमाण-पत्र भी उसने प्रस्तुत किया जिसे नहीं माना गया । रेलवे नियमों के अनुसार रेलवे अस्पताल से प्रार्थी ने देशी दवाखाने में ईलाज के लिये स्वयं को रेफर करवाया हो ऐसा कोई साक्ष्य नहीं है । ऐसी स्थिति में अनाधिकृत देशी दवाखाना, बाड़मेर का जो प्रमाण-पत्र प्रार्थी द्वारा प्रस्तुत किया जाना बताया गया है, यदि इसे अप्रार्थी विभाग द्वारा नहीं माना गया है तब भी उसमें कोई अवैधानिकता प्रकट नहीं होती विशेषकर इसलिये भी कि इस अवधि के बाद भी प्रार्थी ड्यूटी पर उपस्थित नहीं हुआ, जैसा कि उसने अपनी जिरह में ही स्वीकार किया है कि उसे चार्जशीट 1996 में दी गई है । इस प्रकार 18-7-89 से 1996 तक की लगातार स्वैच्छिक अनुपस्थिति के कारण अप्रार्थी विभाग द्वारा रेल सेवा अनुशासन अपील नियम, 1968 के अनुसार दण्डित कर सेवा समाप्ति में कोई अवैधानिकता प्रकट नहीं होती ।

10. अप्रार्थी विभाग की ओर से एक तर्क यह लिया गया है कि प्रार्थी रेलवे का स्थाई कर्मचारी था ऐसी स्थिति में एडमिनिस्ट्रेटिव ट्रिब्युनल एक्ट, 1985 के अनुसार उसे सेवा सम्बन्धी मामलों में इस अधिनियम के तहत स्थापित अधिकरण में जाना चाहिये था व औद्योगिक विवाद अधिनियम के तहत प्रार्थी का श्रमिक होना नहीं माना जा सकता । यह रेफरेन्स केन्द्रीय सरकार द्वारा प्रार्थी को श्रमिक माना जाकर इस अधिकरण को रेफर किया गया है ऐसी स्थिति में प्रार्थी श्रमिक है या नहीं, यह इस रेफरेन्स का विषय नहीं है । अतः इस बिन्दु को निर्णित किया जाना आवश्यक नहीं है ।

11. जहां तक दण्ड के उचित होने का प्रश्न है, सेवा समाप्ति का दण्ड प्रार्थी को उसके कई वर्षों की लगातार अनुपस्थिति के कारण दिया गया है, लम्बे समय की स्वैच्छिक अनुपस्थिति की स्थिति में पारित दण्डादेश डिसप्रपोशनिएट हो यह नहीं माना जा सकता । ऐसी स्थिति में दण्ड में हस्तक्षेप किये जाने का भी कोई कारण नहीं है ।

12. उक्त विवेचन के अनुसार इस रेफरेन्स का उत्तर इस अवार्ड की टर्म्स में निम्न प्रकार दिया जाता है :

13. प्रार्थी को अप्रार्थी द्वारा 21-2-1997 से सेवापृथक करना उचित एवं वैध था । प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है ।

14. इस अवार्ड को प्रकाशनार्थ केन्द्रीय सरकार को प्रेषित किया जाये ।

पुष्पेन्द्र सिंह हाड़ा, न्यायाधीश

नई दिल्ली, 9 मई, 2007

का.आ. 1612.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09-05-2007 को प्राप्त हुआ था ।

[सं. एल-12012/143/2005-आई आर(बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th May, 2007

S.O. 1612.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 28/2006) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Overseas Bank and their workman, received by the Central Government on 09-05-2007.

[No. L-12012/143/2005-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 22nd March, 2007

PRESENT :

K. Jayaraman, Presiding Officer

Industrial Dispute No. 28/2006

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workman.)

BETWEEN

Sri S. Dhiraviyam	:	I Party/Petitioner

AND

The Senior Regional Manager, Indian Overseas Bank, Regional Office, Thanjavur.	:	II Party/Management

Appearance :

For the Petitioner	:	M/s. C. T. Prabhakar, Advocates
For the Management	:	M/s. NGR Prasad, Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-12012/143/2005-IR(B-II) dated 15-05-2006 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned in the order of reference is as follows :—

"Whether the action of the management of Indian Overseas Bank in terminating Shri S. Dhiraviyam from service is legal and justified ? If not, to what relief the workman is entitled ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 28/2006 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner joined the services of Respondent/Bank during the year 1995 and he worked continuously for more than six year upto 2000 and the Respondent bank has also recommended the Petitioner for confirmation to his post. While so, the Respondent/Management without considering the Petitioner's service for more than six years, advised the branch not to allow the Petitioner to work, which is bad in law and unsustainable. The Petitioner has all the rights to be confirmed with the permanent status as per the provisions of Industrial Laws. The Respondent/Management having allowed the Petitioner to work continuously for ten years even after the letter dated 13-7-2000 from the office of Chief Regional Manager and not confirming his employment and terminating his service without any notice is illegal. The Petitioner's representation to the Respondent was rejected without any reason. Hence, the Petitioner raised a dispute before the labour authorities. Since the conciliation ended in failure, the matter was referred by the Government to this Tribunal for adjudication. Hence for all these resons, the Petitioner prays this Tribunal to pass an award directing the Respondent/Management to reinstate him into service and confirm permanent status to him with all attendent benefits.

4. As against this, the Respondent in its Counter Statement contended that since the Petitioner was not sponsored by Employment Exchange, it is only a case of back door entry engaged on daily wage basis. According to the Respondent/Bank norms, the bank used to intimate the Employment Exchange in the region whenever any vacancy arose and those sponsored by Employment Exchange were interviewed by the bank and put them on the termporary panel and whenever a temporary vacancy arose, persons from that panel used to be posted as temporary messengers. Now the present norms are changed and according to present norms, if there is any need for temporary messengers in the branch, full time sweepers who have completed more then five years and part time sweepers who have completed ten years of service will be called for interview and re-designated as temporary messengers and posted in that branch where there is a vacancy. It is false to contend that the Petitioner has

worked continuously for more than six years. On the other hand, he was engaged on daily basis depending upon the requirement. Therefore, there is no question of confirming him in the post of messenger, since his engagement was not through Employment Exchange and following the regular selection procedure and when it was come to the notice of Regional Office of Respondent/Bank, they issued a circular dated 13-7-2000 stating that his engagement should be discontinued and accordingly, it was discontinued. Since the Petitioner's engagement is a back door engagement, he cannot claim confirmation and it is well settled by recent judgement of Supreme Court reported in 2006 4 SCC 1. Even according to the Petitioner his engagement was discontinued in the year 2000 itself and so there is no proof that he worked till August, 2004. Therefore, the Petitioner's claim that he should be regularised cannot be accepted and his appointment was irregular and his service was rightly discontinued and therefore, the Petitioner is not entitled to any relief. Hence, for all these reasons, the claim may be dismissed with costs.

5. In these circumstances, the points for any consideration are—

(i) "Whether the action of the Respondent/ Management in terminating the Petitioner from service is legal and justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

6. After the filing of documents, the matter was posted for enquiry for several hearings. Though the Respondent represented through its advocate, the Petitioner has not represented by anybody. Even after the notice to Petitioner, he has not appeared before this Court nor his advocate appeared before this Court and finally on 8-3-2007, the Petitioner was called absent and was set ex-parte.

7. Therefore, the point for my consideration is —

"Whether the Petitioner has established his contention that he has worked for more than ten years continuously in the Respondent/ Management and whether the termination of Petitioner from service by the Respondent/ Management is illegal ?"

8. It is well settled that the burden of proving the fact that the Petitioner has worked for more than 240 days in a continuous period of 12 calendar months is upon the Petitioner. But, in this case, the Petitioner has not established this fact with any satisfactory evidence nor appeared before this Court to establish the same. Under such circumstances, I am not inclined to accept the contention of the Petitioner that he has worked for more than 240 days in a continuous period of 12 calender months and he has worked for more than ten years continuously in the Respondent/Management. On the other hand, the Respondent/Management contended that the engagement of the Petitioner is only temporary and the Petitioner was engaged intermittently on need basis. Since the Respondent contended that the Petitioner has not worked for 240 days in a continuous period of 12 months, the burden is upon the Petitioner to establish this fact.

9. As I have already stated the Petitioner has not substantiated this contention with any satisfactory evidence. Therefore, I am not inclined to accept the contention of the Petitioner and thus, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

10. In view of my foregoing findings that the Petitioner has not established his contention that he has worked continuously for more than ten years, I find the Petitioner is not entitled to any relief as prayed for. No Costs.

11. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—
On either side : None

Documents marked :—
On either side : Nil

नई दिल्ली, 11 मई, 2007

का.आ. 1613.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेलिंगटन कैन्टोन्मेन्ट बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-05-07 को प्राप्त हुआ था ।

[सं. एल-14011/10/2004-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th May, 2007

S.O. 1613.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 19/ 2005) of the Central Government Indusrial Tribunal/Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Wellington Cantonment Board and their workman, which was received by the Central Government on 11-5-2007.

[No. L-14011/10/2004-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 31st August, 2006

Present

K. Jayaraman, Presiding Officer

Industrial Dispute No. 19/2005

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Wellington Caantonment Board and their workman)

BETWEEN

The Secretary, South India Workers Association, Coimbtore	:	I Party/Petitioner

AND

The Executive officer, Wellington Cantonment Board, Wellington	:	II Party/Management

Appearance :

For the Petitioner	:	M/s. P. Chandrasekaran, Advocates
For The Management	:	M/s. King & Partridge, Advocates

AWARD

The Central Government, Ministry of Labour *vide* Order No. L-14011/10/2004-IR(DU) dated 10-1-2005 has referred the dispute to this Tribunal for adjudication. The Schedule mentioned dispute is as follows :—

> "Whether the claim of the South India Workers Association, Coimbatore against the management of Wellington Cantonment Board, Wellington, Nilgiris for wages between 1-2-99 to 30-7-99 to Shri N. Jagadeesan, Safaiwala on the plea that the management has refused work is legal and justified ? If not, to what relief the workman is entitled to ?"

2. After the receipt of the reference, it was taken on file as I.D. No. 19/2005 and notices were issued to both the parties and they have entered appearance through their advocates and filed their Claim Statement and Counter Statement respectively.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner union espouses the cause of one Mr. N. Jagadeesan, safaiwala of Respondent/Management, who is a permanent worker engaged for all type of sanitation works. But he was disturbed by his immediate superiors wantonly and deliberately. Even though the concerned employee Sri Jagadeesan reported for duty and attended to roll call in time, the Inspector indulged in alteraction with the aggrieved worker and sent him to work after one and half hour daily. In spite of the work carried out allotted to him, they used to mark absence for that day and wantonly made loss of pay. During the year 1999 the said Inspector had refused to allow the aggrieved worker, even though he was present at roll call every day continuously for months together. The complaints given by the concerned employee to his superiors was of no response. Finally, the concerned employee has issued a legal notice to the Respondent through his advocate and thereafter, the worker was allowed to report for duty. Thus, the worker has lost his wages for six months continuously from 1-2-99 to 30-7-99 and the concerned employee was denied his annual increments deliberately during the year and thus he has lost several thousands of repees with cumulative effect. Hence, the union has raised a dispute before the Assistant Labour Commissioner (Central) and on its failure the matter was referred to this Tribunal for adjudication. The refusal to give work to a permanent worker and causing loss of wages to him by the Respondent shows its arbitrariness which is illegal and unjustified. Further, the act of Respondent in denying the work thereby causing loss of wages in an act of unfair labour practice. Hence, for all these reasons the Petitioner union prays this Tribunal to pass an award directing the Respondent to pay the salary for six months from 1-2-99 to 30-7-99.

4. As against this, the Respondent in its Counter Statement the alleged that though Petitioner union raised the industrial dispute before Assistant Labour Commissioner (Central) in which on of the claims of the Petitioner was that the Respondent refused to provide employment and failed to pay wages for the period from 1-1-98 to 30-6-98. Even in that application, the Petitioner accepted that after 30-6-98 the management has been providing employment. When the Petitioner union categorically accepted that the management has not refused to provide employment from 1-7-98 onwards, the reference made to this Tribunal is not inconsonance with the law and the reference made to this Tribunal was not even raised by the party in their claim and therefore, the reference made to this Tribunal is erroneous and non-existent and liable to be dismissed *in limini*. Any how the workman namely Mr. N. Jagadeesan was appointed as a Safaiwala on 19-9-89. After completion of 10 years service, he was granted selection grade scale of pay w.e.f. 19-9-99 and he was also given periodical increments. Therefore, the stand taken by the Petitioner union during the conciliation proceeding is not correct. During the period from 1-1-98 to 30-6-98 for the actual period of absence no wages was paid to the concerned employee. It is false to allege that the Respondent/Management refused employment during the said period. During period from 1-1-98 to 30-6-98 the concerned employee was absent for 4 days in the month of January, 98; 4 days in March, 98; 7 days in April, 98 and one day in May, 98. Even assuming that the reference made to this Tribunal is correct for the period from 1-2-99 to 30-7-99 the concerned workman

continuously absented himself and as he was on unauthorised absence, he is not entitled to salary for the unauthorised absence period. The concerned employee is in the habit of absenting himself continuously without any leave. In spite of various advise made by his superiors, he is not correcting himself. It is false to allege that he was disturbed by his immediate superiors want only and deliberately. At no point of time, the Inspector indulged in altercation with the concerned employee. When the concerned employee did not turn up for work, the Inspector used to mark absence and whenever the concerned employee was late, the inspector used to mark absence, which is one of the works of Inspector. Even though the concerned employee has given a representation, which was examined by Executive Officer and it was found that the concerned employee was at fault and the Executive Officer advised him to mend his ways and report for work regularly. The concerned workman was not in a mood to follow the advice made by superior officers. For that period, the concerned employee did not turn up for work for the reasons best known to him. Hence, for all these reasons, the Respondent prays that the claim may be dismissed with costs.

5. In these circumstances, the points for may consideration are—

(i) "whether the claim of the Petitioner union against the Respondent/Management for wages between 1-2-99 to 30-7-99 to Sri N. Jagadeesan on the plea that management has refused to allot work is legal and justified?"

(ii) "To what relief the concerned workman is entitled?"

Point No. 1 :

6. The allegation of the Petitioner associations is that the Respondent/Management has not paid wages to the concerned employee, whio is a permanent worker of the Respondent/Management between the period 1-2-99 and 30-7-99 and refusal to give wages is illegal and unjustified. On behalf of the Petitioner, one Mr. Gunaseelan, Vice President of the Petitioner union was examined as WW1 and the concerned employee himself has examined as WW2 and marked 9 documents as Ex. W1 to W9.

7. As against this, the Respondent contended that they have not refused wages for the Petitioner for the days he worked. On the other hand, the concerned employee is a chronic absentee for duty and whenever the concerned employee has not come to duty, the immediate superior of the concerned employee put as absent in roll call and he was not paid salary for the period. On behalf of the Respondent, Sanitary Inspector Mr. Palanichamy was examined as MW1 and the Respondent marked 15 documents Ex. M1 to M15.

8. Since the Petitioner has alleged that the concerned employee has worked for all the six months mentioned in the Claim Statement and since he was not paid wages for the said period nemely 1-2-99 to 30-7-99, the burden of proving that he has attended the duty during that period is upon the Petitioner, but except relying on the document Ex. W1 and subsequent letters to the Respondent/ Management, he has not produced any other ducument to establish his contention. Ex. W1 is the copy of lawyer's notice sent by Petitioner to the Respondent/Mangement. It says that even though the concerned employee who is working as Safaiwala under the Respondent/Management for the past ten year, the concerned Health Inspector namely immediate superior of the concernced employee neither allots any work nor entertains him for the duty since January, 1999 at the instigation of the Health Supervisor for obvious reasons. In his evidence, in the cross-examination, the Petitioner has stated that one Mr. Radhakrishnan, who is a Health Superintendent has got enmity against him because the concerned employee has represented the matters of other employees and enraged by this representation, he has got enmity against him and therefore, he instructed the Health Inspectors to put absent for all the days he has worked and attended for duty. For this, there is no proof or evidence to substantiate this claim. Further, he has admitted in his evidence that he belongs to Petitioner union and other employees belong to some other unions and the other employees have represented their grievances to there union leaders, therefore, I find there is no reason for the concerned employee to represent the grievance of other employees who belong to other unions. He further admitted that he is not an office bearer neither in his union nor in other unions. Under such circumstances the reason given by the concerned employee that the Health Superintendent of the Respondent/Management has got enmity over the concerned employee is without any substance, Further, the documents on the side of the Respondent/Management namely Ex. M4 to M15 which are copy of notices issued to the concerned employee from 15-2-99 to 26-6-01 will clearly prove that during the asbence of the concerned employee, the Respondent/Management issued notices for his unauthorised absence and he has also informed through a letter that period of absence will be treated as extra ordinary leave without pay and therefore, it is hard to believe that the Petitioner has attended duty from 1-2-99 to 30-7-99. No doubt, learned counsel for the Petitioner contended that the acknowledgement of notices ware not produced by the Respondent/Management and hence, no reliance can be placed on these documents. Though I find some force in the contention of the Petitioner, since it is official letters addressed to the concerned employee through the Cantonment Executive Officer, I find they must have served on the Petitioner. Even asuming for argument sake that these doucments were not served on the concerned employee, since the burden of proof that he has attended the duty form 1-2-99 to 30-7-99 is upon the Ptetitioner and since the Petitioner has not substantiated his contention with any satisfactory evidence, I find the allegation that he was not paid wages for the said period even while he worked there is without any substance.

9. Then again, learned counsel for teh Petitioner contended that even for argument sake without conceding that the Petitioner was a chronic absentee for duty, the

Respondent has not produced any document to show that they have taken disciplinary action against the concerned employee, who is a permanent employee. If really the concerned employee was absent for so many days as mentioned in Ex. w1, they must have taken action by initiating disciplinary enquiry, but on the other hand, they have not produced and document to show that they have taken action against the concerned employee expect issuing show cause notice and therefor, all these doucments namely Ex. M4 to M15 are created for the purpose of this dispute and only after the notice issued by Respondent's lawyer, these documnet must have been created for the purpose of this case.

10. Here again, though I find some force in the contention of the learned counsel for the Petitioner, on scrutinising the entire evidence in this case, I find there is not substance or point in the contention of the learned counsel for the Petitioner because though the allegaion in the Claim Statement that the concerned employee attended the office form 1-2-99 to 30-7-99, he was marked absent by the officials of the Respondent/Management, the lawyer's notice was issued only on 15-6-99 i.e after four months the alleged marking of absence in the register and the concerned employee has not produced any document to show that even prior to Ex. W1 whether he has informed the authorities with regard to the activities of the higher officials. Under such circumstances, since the petitioner has not established the that he has attended the duty from 1-2-99 to 30-7-99 and since the Respondent has produced the document to show that the Petitinoer was a chronic absentee for duty for long period and his period of absence was marked as absent and no salary was paid to him I find the action taken by the Respondent/Management in deducting the wages for the period form 1-2-99 to 30-7-99 is legal and justified. Further, the Vice President of the Petitioner union while be was examined as WW1, has stated that the Petitioner has worked from 27-1-99 to 19-7-99 and only to aviod confusion the Govt. has mentioned the period as 1-2-99 to 30-7-99. Therefore, even according to the evidence of Petitioner union the wages of the concerned employee form 20-7-99 were given to him. Therefore, without any proof or without any substantial evidence, the Petitioenr union claims wages of the concerned employee for the period from 1-2-99 to 30-7-99. On the other hand, form the evidence of MW1 and from the documents produced by Respondent/Management, I come to the conclusion that the concerned employee is a chronic absentee for duty and only for the period of his absence, the wages were not paid to him. As such, I find this point against the Petitioner.

Point No. 2 :

The next point to be decided is to what relief the concerned employee is entitled ?

11. In view of my foregoing finding that the deduction of wages for the period from 1-2-99 to 30-7-99 by the Respondent/Management in respect of the concerned employee is legal and justified, I find the concerned employee is not entitled to any relief as prayed for by the Petitioner association.

No Costs.

12. Thus, the reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st August, 2006.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

For the I Pary/Claimant : WW1 Sri G. Gunaseelan
WW2 Sri N. Jagadeesan

For the II Pary/Management : MW1 Sri C. Palnichamy

Documents marked :

For the I Party/Petitioner :

Ex. No.	Date	Description
W1	15-06-99	Xerox copy of the lawyer's notice sent by Petitioner to Respondent Management.
W2	19-07-99	Xerox copy of the letter from Respondent to Petitioner.
W3	15-09-99	Xerox copy of the letter from Ministry of Labour to Concerned employee.
W4	09-11-99	Xerox copy of the letter from Commissioner of Labour to Regional Labour Commissioner (Central), Chennai.
W5	07-01-02	Xerox copy of the letter from concerned employee to Respondent/ Management.
W6	Nil	Xerox copy of the postal acknowledgement singed by II Party/ Management.
W7	11-03-03	Xerox copy of the comments submitted by Respondent Before Regional Labour Commissioner (Central).
W8	March, 06	Xerox copy of the salary slip of Mr. A. Chinnan.
W9	March, 06	Xerox copy of the salary slip of Petitioner.

For the II Party/Management :–

Ex. No.	Date	Description
M1	30-12-02	Xerox copy of the petitioner under section 2k.
M2	Nil	Xerox copy of the details of absent period of Concerned employee.
M3	11-03-03	Xerox copy of the reply submitted during conciliation by Respondent/ Management.
M4	15-02-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M5	19-07-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.

M6	07-09-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M7	23-09-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M8	29-09-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M9	21-10-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M10	22-12-99	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M11	28-02-2000	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M12	31-03-2000	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M13	31-03-2000	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M14	29-12-2000	Xerox copy of the notice issued to concerned employee by the Respondent/Management.
M15	26-09-2001	Xerox copy of the notice issued to concerned employee by the Respondent/Management.

नई दिल्ली, 11 मई, 2007

का.आ. 1614.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, जोधपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-05-07 को प्राप्त हुआ था ।

[सं. एल-40012/201/2002-आईआर(डीयू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th May, 2007

S.O. 1614.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award of the Labour Court, Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Post and their workman, which was received by the Central Government on 11-05-2007.

[No. L-40012/201/2002-IR (DU)]

SURENDRA SINGH, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी:—श्री पुष्पेन्द्रसिंह हाड़ा, आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) संख्या :— 5/2003

दौलतसिंह पुत्र श्री जयसिंह मार्फत भूरसिंह राठौड़ ट्रेड यूनियन प्रतिनिधि ट्रेड यूनियन कार्यालय गणेश स्कूल के पास बासनी सैकिण्ड फेस, जोधपुर

.....प्रार्थी

बनाम

दी सीनियर सुपरिन्टेन्डेन्ट ऑफ पोस्ट ऑफिसेज, डिपार्टमेन्ट ऑफ पोस्ट्स, जोधपुर मण्डल, जोधपुर

.....अप्रार्थी

रेफरेन्स अन्तर्गत धारा 10 औ. वि. अधिनियम, 1947

उपस्थिति :

(1) श्री भूरसिंह प्रतिनिधि प्रार्थी

(2) श्री कालूराम प्रतिनिधि अप्रार्थी

अवार्ड

दिनांक 16 जनवरी, 2007

1. भारत सरकार ने अपनी अधिसूचना क्रमांक एल. 40012/201/2002/आई.आर.(डीयू) दिनांक 23-12-2002 द्वारा निम्न विवाद् अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947 के तहत इस न्यायालय को रेफर किया है :—

"Whether the action of the management of Sr. Supdt. of Post Offices, Jodhpur Division, Jodhpur in terminating the services of Sh. Daulat Singh S/o Sh. Jai Singh B.P. L. w.e.f. 24-1-2002 is just and legal? If not , to what relief the workman is entitled to ?"

2. प्रार्थी ने अपना मॉग-पत्र इस आशय का प्रस्तुत किया है कि प्रार्थी को अप्रार्थी संस्थान के आदेशानुसार दिनांक 26-2-2001 को बी.पी.एस. के पद पर शाखा डाकघर बागथल तहसील पोकरण में नियोजित किया गया, प्रार्थी का वेतन 1911 रुप्रये प्रतिमाह था, प्रार्थी ने अप्रार्थी के अधीन लगातार 240 दिन से अधिक कार्य किया, अप्रार्थी द्वारा प्रार्थी की सेवाएं 24-1-2002 को मौखिक आदेश से सेवामुक्त कर दिया, सेवामुक्ति का कोई कारण नहीं बताया गया, सेवामुक्ति से पूर्व एक माह का नोटिस, नोटिस पे व छटनी मुआवजा नहीं दिया गया न ही कोई आरोप-पत्र दिया न ही जॉच कार्यवाही की गई, प्रार्थी स्थाई नेचर का कर्मचारी था तथा कार्य भी स्थाई नेचर का था, विभाग में आज भी वैकेन्सी है परन्तु प्रार्थी को न्याय से प्राकृतिक सिद्धांतों विपरीत गैर कानूनी तरीके से व बदले की भावना से प्रेरित होकर सेवामुक्त किया गया है जो अनुचित व अवैध है अत: प्रार्थी को 24-1-2002 से सेवा में पुन: बहाल किये जाने व समस्त लाभ दिलाये जाने का अवार्ड पारित किया जावे ।

3. अप्रार्थी की ओर से जवाब में कहा गया है कि प्रार्थी को 26-2-01 को अस्थाई व्ययस्था पर लगाया गया था चूँकि राणाराम शाखा डाकपाल बागथल के विरुद्ध अतिरिक्त विभागीय डाक एजेन्ट (सेवा व आचरण) नियम 1964 के नियम 8 के अन्तर्गत अनुशासनात्मक कार्यवाही प्रस्तावित होने के कारण पुट ऑफ ड्यूटी का आदेश दिया था अत: डाकघर में जगह रिक्त हो गई व आम जनता को पेरशानी न हो इसलिए प्रार्थी को अस्थाई तौर पर लगाया था, राणाराम को पुन: 23-1-2002 को ड्यूटी पर वापस लिया गया इसलिए प्रार्थी की अस्थाई सेवाएं समाप्त की गई । अप्रार्थी विभाग उद्योग की श्रेणी में नहीं आता है । प्रार्थी को

सीमित समय के लिए अस्थाई तौर पर राणाराम की जगह लगाया था अत: प्रार्थी को पद का कोई अधिकार प्राप्त नहीं होता, व प्रार्थी को नाटिस, नोटिस पे व छंटनी मुआवजा आदि देने का प्रश्न ही नहीं उठता, प्रार्थी का उक्त पद पर कभी भी चयन कर उसे नियमित नियुक्ति नहीं दी गई, विभाग में कोई वैकेन्सी नहीं है । प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी नहीं हैं ।

4. माँग-पत्र के समर्थन में प्रार्थी ने स्वयं का शपथ-पत्र प्रस्तुत किया जिसपर अप्रार्थी प्रतिनिधि द्वारा जिरह की गई तथा अप्रार्थी की ओर से ओ.पी.शर्मा का शपथ-पत्र प्रस्तुत किया गया जिसपर प्रार्थी प्रतिनिधि द्वारा जिरह की गई ।

5. दोनों पक्षों के प्रतिनिधिगण की बहस सुनी गई। पत्रावली का अवलोकन किया गया ।

6. प्रार्थी ने अपनी साक्ष्य में यह कहा है कि दिनांक 26-2-01 को अप्रार्थी विभाग द्वारा उसे बी.पी.एस. के पद पर बागथल डाकघर में 1911 रुपये प्रतिमाह वेतन पर नियोजित किया गया जहां उसने 23-1-02 तक लगातार कार्य किया । इन तथ्यों के संबध में अप्रार्थी विभाग द्वारा जवाब के पैरा सं. 1 में यह स्वीकार किया गया है कि दौलतसिंह को दिनांक 26-2-01 को राणाराम के विरुद्ध अनुशासनात्मक कार्यवाही प्रस्तावित होने से अस्थाई व्यवस्था पर नियोजित किया गया था । अप्रार्थी विभाग द्वारा जवाब में स्वीकार किया गया है कि दिनांक 23-1-02 को राणाराम शाखा डाकपाल को वापस ड्यूटी पर लिया गया व इस कारण दौलतसिंह की अस्थाई सेवाएं दिनांक 23-1-02 को समाप्त की गई । प्रार्थी की साक्ष्य व अप्रार्थी विभाग की ओर से दिये गये जवाब में की गई स्वीकारोक्ति एवं अप्रार्थी विभाग के गवाह की ओ.पी. शर्मा द्वारा जो तथ्य अपने शपथ-पत्र में बताये गये है उनसे यह तथ्य सिद्ध है कि प्रार्थी ने दिनांक 26-2-01 से 23-1-02 तक लगातार वी.पी. एस. के पद पर राणाराम शाखा डाकपाल की जगह अप्रार्थी विभाग में कार्य किया ।

7. अप्रार्थी विभाग के अनुसार प्रार्थी को अस्थाई व्यवस्था पर डाक कार्य बाधित न हो इसलिए अस्थाई रूप से लगाया गया था । यद्यपि विशिष्ठ रूप से अप्रार्थी विभाग द्वारा यह प्ली भी नहीं ली गई है कि प्रार्थी को अस्थाई व्यवस्था के अधीन निश्चित अवधि के लिए ठेके पर रखा गया था । परन्तु अप्रार्थी विभाग द्वारा जो जवाब दिया गया है वह चूँकि विभागीय प्रतिनिधि द्वारा दिया गया है यदि उसका आशय यह भी लिया जाए कि प्रार्थी को ठेके पर रखा गया था तब भी प्रार्थी को ठेके पर रखे जाने के सम्बन्ध में कोई ऐसा दस्तावेज प्रस्तुत नहीं हुआ है जिससे यह माना जा सके कि प्रार्थी को नियोजित किये जाते समय यह शर्त हो कि उसे ठेके पर रखा जा रहा है, व ठेके की समाप्ति पर या ठेके का रिनुवल न किये जाने की स्थिति में ठेका समाप्त हो गया हो । विभाग की न तो मौखिक साक्ष्य है न ही कोई दस्तावेजी साक्ष्य है । ऐसी स्थिति में चूँकि यह तथ्य प्रार्थी व अप्रार्थी की साक्ष्य से सिद्ध है कि प्रार्थी ने 240 दिन से अधिक दिन तक सेवा समाप्ति की दिनांक 23-1-02 से पूर्व के एक वर्ष में कार्य किया था अत: अप्रार्थी विभाग के लिए धारा 25-एफ, 25-जी व 25-एच औद्योगिक विवाद अधिनियम के प्रावधानों की पालना किया जाना आवश्यक था ।

8. इस सम्बन्ध में अप्रार्थी विभाग द्वारा एक तर्क यह भी लिया गया है कि अप्रार्थी भारत सरकार का डाक तार विभाग है व इसे औद्योगिक विवाद अधिनियम के तहत उद्योग की परिभाषा में नहीं माना गया है । इस संबन्ध में अप्रार्थी विभाग द्वारा 1996 एस.सी.सी (एस.सी.) 36 एस. डी.आई पोस्ट बनाम विलियम जोसफ पर रिलायन्स प्लेस की गई है जिसमें डाक तार विभाग को माननीय उच्चतम न्यायालय द्वारा उद्योग की परिभाषा में नहीं माना गया है । अप्रार्थी विभाग का यह तर्क माने जाने योग्य नहीं है क्योंकि अप्रार्थी विभाग द्वारा उदृत उक्त रूलिंग माननीय उच्चतम न्यायालय द्वारा इसके बाद के निर्णय ए.आई. आर. 1998 एस.सी. 656 जनरल मैनेजर टेलीकोम बनाम एस.श्री निवास में विशिष्ठ रूप से ओवररूल कर दिया गया है व डाक तार विभाग को उद्योग की परिभाषा में आना माना गया है । इसी प्रकार 2000 III एल. एल. जे. (सप्लीमेन्ट) 1627, 2001 III एल.एल.जे. (सप्लीमेन्ट) 622, 2002 चतुर्थ एल.एल.जे. 1504, 2004 II एल.एल.जे. 1092 (कलकत्ता डी.बी.) में भी टेलीकोम विभाग को उद्योग माना गया है । ऐसी स्थिति में यह नहीं माना जा सकता कि अप्रार्थी विभाग उद्योग की परिभाषा में न आता हो व प्रार्थी इस कारण से श्रमिक न हो ।

9. प्रार्थी ने अपने साक्ष्य में उसे धारा 25-एफ औद्योगिक विवाद अधिनियम के अनुसार नोटिस या नोटिस वेतन, छंटनी मुआवजा नहीं दिया जाना बताया है । प्रार्थी की इस साक्ष्य का कोई प्रतिवाद अप्रार्थी विभाग की ओर से प्रस्तुत नहीं हुआ है अत: यह तथ्य सिद्ध होना पाया जाता है कि प्रार्थी को नोटिस या नोटिस वेतन व छंटनी मुआवजा की आदयगी नहीं की गई । ऐसी स्थिति में प्रार्थी की सेवा समाप्ति औद्योगिक विवाद अधिनियम के अनुसार न किये जाने से अवैध थी ।

10. 2006 (1) एस.सी.सी. 479 के अनुसार यह सिद्ध करने का भार प्रार्थी पर था कि प्रार्थी सेवा समाप्ति के बाद से अब तक गेनफुली नियोजित नहीं रहा । प्रार्थी द्वारा इसप्रकार की कोई साक्ष्य नहीं दी गई है । ऐसी स्थिति में यह तथ्य सिद्ध होना नहीं पाया जाता कि सेवा समाप्ति के बाद से प्रार्थी अब तक गेनफुली नियोजित नहीं रहा हो ।

11. अप्रार्थी विभाग की ओर से यह साक्ष्य दी गई है कि प्रार्थी को शाखा डाकपाल राणाराम के विरुद्ध अनुशासनात्मक कार्यवाही लम्बित होने के कारण उसके एवज में कार्य करने हेतु अस्थाई रूप से नियोजित किया गया था व राणाराम द्वारा 23-1-02 को पुन: ड्यूटी पर लिये जाने से प्रार्थी को सेवा से हटा दिया गया । इससे यह स्पष्ट है कि प्रार्थी को किसी स्वतंत्र पद पर नियोजित नहीं किया जाकर राणाराम के पद पर ही उसके एवज में अस्थाई रूप से नियोजित किया गया था । ऐसी स्थिति में अब उस पद का रिक्त होना नहीं माना जा सकता । पद के रिक्त न होने से उसी पद पर इन परिस्थितियों में सेवा में पुर्नस्थापित किये जाने का आदेश दिया जाना उचित नहीं होगा व इन परिस्थितियों में प्रार्थी को क्षतिपूर्ति के रूप में 15,000 रु. (पन्द्रह हजार रुपये) दिलाया जाना उचित होगा ।

12. उक्त विवेचन के अनुसार इस रेफरेन्स का उत्तर इस अवार्ड की टर्म्स में निम्न प्रकार दिया जाता है :

13. प्रार्थी को अप्राथी द्वारा दिनांक 24-1-02 से सेवामुक्त किया जाना अनुचित व अवैध था । अत: प्रार्थी सेवा में पुर्नस्थापन के बजाए 15,000 रु. (पन्द्रह हजार रुपये) क्षतिपूर्ति प्राप्त करने का अधिकारी होगा । इस राशि की अदायगी एवार्ड की दिनांक से छ: माह में न किये जाने की स्थिति में प्रार्थी इस राशि पर एवार्ड की दिनांक से राशि की अदायगी तक 6 प्रतिशत प्रतिवर्ष की दर से ब्याज प्राप्त करने का अधिकारी होगा । अन्य कोई अनुतोष प्रार्थी प्राप्त करने का अधिकारी नहीं होगा ।

14. इस अवार्ड को प्रकाशनार्थ भारत सरकार को प्रेषित किया जावे ।

पुष्पेन्द्रसिंह हाड़ा, न्यायाधीश

नई दिल्ली, 11 मई, 2007

का.आ. 1615.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, पटना के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-5-2007 को प्राप्त हुआ था।

[सं. एल-40012/51/2003-आई आर (डी यू)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th May, 2007

S.O. 1615.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Patna as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 11-05-2007.

[No. L-40012/51/2003-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

REFERENCE CASE NO. 47 OF 2003
Reference Case No. 2(C) of 2004

Between the management of Telecom Civil Division, BSNL, High Complex, 5th Floor, Exhibition Road, Patna and their workmen Sanjay Kumar Paswan, Vill : Anand Vihar, P.O. Anisabad, Patna.

For the Management	: Shri Harish Chandra Prasad, Advocate.
For the Workman	: Shri V.N. Sahay, Advocate and Smt. Abha Kumari, Advocate.
Present	: Vasudeo Ram, Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, dated the 30th April, 2007

By adjudication Oder No. L-40012/51/2003-IR(DU) dated the 20th June, 2003 the Government of India, Ministry of Labour, New Delhi under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called 'the Act' for brevity) referred the dispute between the management of Telecom Civil Division, BSNL, High Complex, 5th Floor, Exhibition Road, Patna and their workman Sanjay Kumar Paswan, resident of Anand Vihar, Anisabad, Patna to Central Government Industrial Tribunal-cum-Labour Court, Dhanbad No.2 for adjudication on the following :—

> "Whether the action of the management of BSNL, Patna, in terminating the services of Shri Sanjay Kumar Paswan, workman instead of regularising him after working for 240 days in the services of BSNL, Patna, justified ? If not, to what relief the workman is entitled ?"

Subsequently *vide* adjudication Order No. L-40012/51/2003-IR(DU), dated the 22nd December, 2003 the Government of India, Ministry of Labour, New Delhi under Section 7A read with sub-section (1) of Section 33B of the Industrial Disputes Act, 1947 withdrew the proceeding from Central Government Industrial-cum-Labour Court, Dhanbad No. 2 and tranferred the same to this Tribunal for adjudication.

2. The contention of the workman is that he was orally appointed by the management of Bharat Sanchar Nigam Limited, Patna to discharge the duties of a peon on payment of daily wages @ Rs. 36 per day and after appointment the workman worked at Sub-Division V, 5th Floor, Telecom Civil Division, Telephone Bhawan, Patna-1 from 4-2-1999 to 30-4-2001 continuously. He worked from 9 A.M. to 6 P.M. daily and did the work of (i) Diarising the letters, mails, (ii) Dispatch of letters, (iii) Taking out registers/Books from Almirah and placing the same before the Officials and *vice-versa* and (iv) Serving tea/water as per the requirement. Further, the contention of the workman is that headquarter of BSNL, asked for option from the serving employees as to whether they wanted to continue their services in Government of India, or transfer in BSNL. The workman also exercised his option and his name was forwarded to headquarter alongwith other workmen for regularisation of their services. But the workman was stopped from working w.e.f. 1-5-2001. The workman made representation but he could not be reinstated or regularised in service. The workman raised Industrial Dispute before the Asstt. Labour Commissioner (Central), Patna. The concilliation proceeding failed. Hence this reference. According to the workman the management violated the provisions contained under Section 25F of Industrial Disputes Act. The management violated its own circulars regarding permanent absorption of the workman. The management did not pay equal wages to the workman for the equal work. The management resorted to unfair Labour Practice as per Schedule V of the Industrial Disputes Act, 1947. The workman claimed that he be reinstated w.e.f. 1-5-2001 with back wages besides the due wages for the period of work done by him.

3. The contention of the management is that Sanjay Kumar Paswan was not appointed by the management of B.S.N.L. on any vacant post nor employment letter was issued to him . His services were utilized in the Office of

B.S.N.L. on Part-time work as daily rated Mazdoor whenever required and for that he was paid the wages as per guidelines of the Government. From May, 2001 his services were not utilised by the management. Further the contention of the management is that the said workman was never engaged for a period of 240 days or more days in a calendar year. Hence the provision laid under Section 25F of Industrial Disputes Act, 1947 is not attracted in this case. The workman, according to the management is not entitled to be regularised or reinstated in service of BSNL. According to the management the claim made or relief sought in the case is fit only to be rejected.

4. Upon the pleadings of the parties and the terms of reference the following points arise out for decision :—

(i) Whether the action of the management of BSNL, Patna in terminating the services of Shri Sanjay Kumar Paswan workman instead of regularising him after working 240 days in the services of BSNL, Patna justified. ?

(ii) To what relief or reliefs the workman is entitled ?

FINDINGS

Point No. (i) :

5. Both the parties have adduced oral as well as documentary evidence in support of their respective contentions. The management has examined altogether six witnesses namely : Deen Dayal Prasad, Asst. Engineer, BSNL (M.W. 1), Ashok Kumar Singh, Asst. Engineer, BSNL (M.W.2), Arun Kumar, Executive Engineer, BSNL (M.W. 3), Subodh Kumar Sinha Executive Engineer, Telecom (M.W. 4), Anjani Kumar Shrivastava, Asst. in BSNL, Patna Chief Office (M.W. 5) and Pashupati Mahato, retired Executive Engineer, BSNL, Patna (M.W. 6), Sanjay Kumar Paswan the workman alone has deposed on his own behalf. The management has got exhibited the photo copies of as many as 26 payment receipts (Ext. M to M/15) showing the payment made by the management for the work done by the different persons in different months out of which 14 receipts (Ext. M to M/13) relate to the payment made to the workman Sanjay Kumar Paswan, 4 receipts (Ext. M/14-series) relate to Ranjit Kumar Paswan and 8 receipts (Ext. M/15-series) relate to Ajay Kumar Paswan. Besides that photo copy of dispatch register 49 pages (Ext. M/16-series) have been filed on behalf of the management. As regards the payment receipts (Ext. M to M/15-series) the contention of the management is that different persons namely Sanjay Kumar Paswan, Ranjit Kumar Paswan, Ajay Kumar Paswan worked and payments were made to them while the contention of the workman is that Ranjit Kumar and Ajay Kumar Paswan never worked, it was he (Sanjay Kumar Paswan) who worked continuously but the management paid him in different names so that the workman may not claim continued engagement by the management.

6. The workman Sanjay Kumar Paswan has got exhibited the photo copy of certificate dated 31-1-2001 regarding his working in that office from 4-2-1999 granted by the Asstt. Executive Engineer, BSNL (Ext. W), photo copy of details of the work done in the years 1999, 2000 and 2001 by Sanjay Kumar Paswan (Ext.W/1) signed by Ashok Kumar Singh, Asst. Engineer, BSNL and P. Mahato, Executive Engineer, BSNL (M.W. 2 and M.W. 6), photo copy of letter No.1313 dated 23-2-2001 of Executive Engineer, BSNL, Civil Divison, Patna forwarding the names of 10 persons who exercised option (W/2) alongwith the photo copy of enclosure dated 22-2-2001 the option exercise by the workman Sanjay Kumar Paswan, (Ext.W/3), photo copy of letter No. 853 dated 15-10-2001 alongwith the photo copy of enclosure concerning regularisation of TSM in to RM/DRM, (Ext.W/4), photo copy of letter No.195 dated 26-3-2002 alongwith its enclosures concerning regualrisation of TSM into RM and DRM, (Ext.W/5), photo copy of letter No. 21 dated 30-1-2001 of Asstt. Executive Engineer, BSNL, Patna showing working one Part Time Casual Labour from 4-1-2001 as a peon. (Ext.W/6), photo copy of letter No. 219 dated 23-7-2002 of Executive Engineer (HQ), BSNL, Civil Division, Patna (Ext.W/7), photo copy of letter dated 28-4-2002 of Member of Parliament (Ext.W/8) and the photo copy of letter No. 276 dated 21-2-2003 of Superintending Engineer regarding regular engagement of Sanjay Kumar Paswan (Ext. W/9). Besides that the management filed the attested copies of official diary and of the Dispatch Register. The workman has got the same exhibited from his side (Ext. W/10 to W/37). I may mention here that all the exhibits of both the parties mentioned/ enumerated above have been marked exhibit on formal proof having been waived by the other side. The aforesaid documents have been adduced in evidence by the parties on the point as to whether the workman worked for 240 days in the service of BSNL, Patna or not?

7. It has been argued on behalf of the workman that from the terms of reference it is clear that this Tribunal is not required to decide as to whether the workman has worked for 240 days in a calendar year or not, from the terms of reference it will transpire that the said point is admitted and is not in controversy. According to the submissions made on behalf of the workman this Tribunal is simply required to adjudicate as to whether the action of the management of BSNL, Patna in terminating the services of the workman instead of regularising him is justified or not. In this connection it has also been submitted that the Tribunal can not go beyond the terms of reference. The decision reported in 1979-Lab.I.C. 827 (Supreme Court) has been cited on behalf of the workman on this point. It has been held in the said decision:—

> "The jurisdiction of the Tribunal in industrial dispute is limited to the points specifically referred for its adjudication and to matters incidental thereto and the Tribunal can not go beyond the terms of

reference. Where the very terms of reference showed that the point in dispute between the parties was not the fact of closure of its business by the employers and the references were limited to the narrow questions as to whether the closure was proper and justified, the Tribunals by the very terms of the reference, had no jurisdiction to go behind the fact of closure and inqurie into the question whether the business was in fact closed down by the management."

As against that the submission made on behalf of the management is that the decision taken by the Labour Commissioner is not binding on this Tribunal, this Tribunal has to decide this point independently as to whether or not the workman worked for 240 days in a calendar year.

8. There can be no-dispute on the points that this Tribunal has to adjudicate as per the terms of reference and can not go beyond the terms of reference. The terms of reference in this case shows that the point for adjudication is that after working 240 days in the services of BSNL, Patna whether the action of the BSNL, Patna in terminating the services of the workman instead of regularise him is justified or not? Under the circumstances I find that this Tribunal is not required to decide as to as whether the workman Sanjay Kumar Paswan has worked for 240 days in a calandar year in the services of BSNL, Patna or not; this Tribunal is required to adjudicate as to whether the action of the management BSNL, Patna in terminating the services of Shir Sanjay Kuamr Paswan, the workman instead of regularising him is justified or not. Under the circumstances I need not discuss the evidence either oral or documentary adduced on behalf of the parties on the point whether the workman worked for 240 days in the service of BSNL, Patna or not.

9. This fact it has been admitted by the management that the services of workman Sanjay Kumar Paswan as peon were utilised by the management of BSNL on Part-Time work. This has also been admitted by the management that his services has not been utilized from May, 2001 meaning thereby the services of Sanjay Kumar Paswan were utilized by the management till the end of April, 2001. Section 2(oo) of 'the Act' has defined retrenchment as follows:—

"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of a workman, or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned as its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill health;

The facts of this case show that after taking 'continuous service' as defined under sub-clause (ii) of (a) of clause sub-section (2) of Section 25B of 'the Act' i.e. after taking 240 days work in a calendar year from the workman, the services of the workman has been terminated without any reasons and thus it is a clear case of retrenchment.

10. Now the question arises as to whether the said termination of service of the workman or his retrenchement is justified? Section 25F of 'the Act' speaks as follows."

"Condition procedent to retrenchment of workman—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

(a) the workman has been one month's notice in writing indicating the reasons for retrenchement and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notices;

(b) the workman has been paid, at the time of retrenchement compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government by notification in the Official Gazette."

In this case the workman Sanjay Kumar Paswan has been retrenched by the management of BSNL, Patna without making compliance of the provisions laid down under Section 25F of' 'the Act'; meaning thereby the workmna was neither given any notice one month prior to his retrenchement nor notice pay or compensation has been paid to him. Under the circumstances the action of the management of BSNL, Patna in terminating the services of workman Sanjay Kumar Paswan instead of regularising him after working for 240 days in a calendar year in the services of BSNL, Patna can not be held justified. This action of the management of BSNL, Patna is out and out unjustified. This point is accordingly decided.

Point No. (ii) :

11. The workman Sanjay Kumar Paswan (W.W.1) has stated that he was engaged by the Assistant Engineer and he worked on his (Asst. Engineer) order. The engagement of Sanjay Kumar Paswan as Part Time worker is not disputed. Pashupati Mahato (M.W.6), who remained posted as Executive Engineer in PSNL, Civil Division, Patna from 24-11-2000 to 23-4-2002 in his cross-examination has stated that in Sub-Division the engagement of workman used to be done by the S.D.O.i.e. Asstt. Engineer. He in his cross-Examination has admitted before this Tribunal that Sanjay Kumar Paswan had worked under him in Sub-Division No.5, Patna. He (M.W.6) in his statement has stated that there had been no advertisement for the appointment of the workman nor his name was called for from the Employment Exchange nor any letter of appointment of the worman was issued. It is also the case of the workman that he was not given any appointment letter and was employed orally. The management has not shown that the letter of appointment is required under rules for being engaged as a Part Time workman. M.W.6 in his cross-examination has admitted that the names of casual workers of department were sent to Delhi (Headquaters) for absorption of the casual workers. M.W.6 has stated that the name of Sanjay Kumar Paswan also was in that list. The said fact that Sanjay Kumar Paswan was one of the workmen whose names were sent to Head Quarters for absorption also stands supported from the letter No. 195 dated 26-3-2002 (Ext.W/5) of the Chief Engineer (Civil) BSNL, Patna in which the name of Sanjay Kumar Pawan is mentioned at serial No.36 of the enclosure. This amply shows that the department/management of BSNL, Patna required the services of the workman. It is not out of place to mention that in that enclosure at serial No.36 the date of engagement of Sanjay Kumar Paswan has been mentioned as 4-2-99.

12. It has been argued on behalf of the management that completion of 240 days service in a calandar year in itself is not a ground for directing regularisation particularly in a case when the workman has not appointed in accordance with the extant rules. The decisions reported in AIR-2004-SC-4839 and AIR-2005-SC-1790 have been cited in support of the same. Para 18 of the decision (AIR-2005-SC-1790) has been referred which runs as follows:—

> "When a workman is appointed in terms of a scheme on daily wages, he does not derive any legal right to be regularised. It is now well known that completion of 240 days of continuous service in a year may not by itself be a ground for directing regularisation partiuclarly in a case when the workman has not been appointed in accordance with the extant rules."

The same view has been expressed in para 20 of the decision reported in AIR-2004-SC-4839. But in above mentioned both the decisions the workmen were appointed under the scheme, in the case of Dhampur Sugar Mills Ltd. Vs. Bhola Singh (AIR-2005-SC-1790) the workman had worked as a trainee/apprentice under a scheme sponsored by the State Government for training the cane growers while the workmen in the case of Executive Engineer Z.P. Engineering Division and another Vs. Digambara Rao etc. (AIR-2004-SC-4839) were employed on daily wages under 'Kriya Scheme' aimed at providing drinking water and construction of roads. Under the circumstances the said case differ from the present case and the said decisions do not apply in this case of workman Sanjay Kumar Paswan.

13. From the above discussions and even from the documents of the management it transpired that the workman Sanjay Kumar Paswan worked from 4-2-99 to 30-4-2001 on the orders of the Asstt. Engineer and worked more than 240 days in every calendar year. His name alongwith other casual workers was recommended to the headquarter for absorption. The officer of BSNL, Sub-Division is not a temporary Office, it is likely to continue for indefinite period. under the circumstances I find that the workman deseves to be regularised in the service under the management of BSNL, Patna w.e.f. 1-5-2001. The workman Sanjay Kuamr Paswan deserves to be reinstated. I may mention that no work has been taken from the workman from 1-5-2001. The workman has worked as peon, which is not a skilled or special post so that he may not have got another job after retrenchement. Under the circumstances I am not inclined to grant back wages. The workman deserves to be reinstated on the post of peon under the management of BSNL, Patna. This point is accordinly decided.

14. In the result I find and hold that the action of the Management of BSNL, Patna in terminating the serices of workman Sanjay Kumar Paswan instead of the regularising him after working 240 days in the service of the BSNL, Patna is unjustified. The workman Sanjay Kuamr Paswan deserves to be regularised on the post of peon under the management of BSNL, Patna w.e.f. 1-5-2001. The management of BSNL, Patna is directed to reinstate the workman on the post of peon within two months from the date of publication of the Award but it without back wages.

15. And this is my award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 11 मई, 2007

का.आ. 1616.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 99/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-5-2007 को प्राप्त हुआ था।

[सं. एल-40012/128/95-आई आर (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11 May, 2007

S.O. 1616.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 99/2002 of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 11-5-2007.

[No. L-40012/128/95-IR(DU)]

SURENDRA SINGH, Desk Officer

ANNEXURE

BEFORE SHRI A.N.YADAV PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/99/2002 Date: 4-5-2007

Petitioner/ Party No. 1 : Smt. Kalawatibai Narayan Admane, C/o G.S. Pawar, Advocate, Nanded Road, Binanath Society, Latur-413512.

Versus

Respondent / Party No.2 : The Senior Superintendent, Telegraph, Circle, Solapur [M.S.] 413001.

AWARD

Dated the 4th May, 2007

1. The Central Government after satisfying the existence of disputes between Smt. Kalawatibai Narayan Admane, C/o G.S. Pawar, Advocate, Nanded Road, Binanath Society, Latur party No.1 and the Senior Superintendent, Telegraph, Circle, Solapur Party No.2 referred the same for adjudication to this Tribunal *vide* its Letter No. L-40012/128/95/IR/(DU) Dt. 27-6-1996 under clause (d) of sub-section (1) and sub section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of Sr. Supdt. Telegraph Circle Solapur and Asstt. Supdt. (TT) Departmental Telegraph Office in terminating the services of Smt. Kalwatibai Narayan Adamane is legal and justified? If not, to what relief the workman is entitled to?"

3. The case was fixed for filling the affidavit of the petitioner on 20-3-2006 and it was pending for the same purpose of filling the affidavit right from 29-6-2004. However, from 29-6-2004 neither the peitioner nor his counsel remain present and attended the case. Similarly nobody appeared on behalf of the management. Thus no evidence has been adduced by the petitioner to prove her contentions that her termination was illegal and she was entitled for any relief. No doubt the Respondent is also remaining absent right from the date of filling of the Written Statement opposing the claim of the petitioner. But the inital burden is on petitioner who was expected to produce the evidence. She has not produced any evidence on the contrary she remained absent and there is no other go than to dismiss her petition or reference for her default. Hence the claim is dismissed for default of the petitioner.

Hence the Award.

Dated: 4-5-2007

A.N. YADAV, Presiding Officer

नई दिल्ली, 11 मई, 2007

का.आ. 1617.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या—) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-5-2007 को प्राप्त हुआ था।

[सं. एल-40011/19/99-आई आर (डी यू)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th May, 2007

S.O. 1617.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labout Court/Industrial Tribunal Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 11-5-2007.

[No. L-40011/19/99-IR(DU)]

SURENDRA SINGH, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी : श्री पुष्पेन्द्रसिंह हाड़ा, आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) सं. 36/2001

नेशनल टेलीकॉम स्टाफ यूनियन (ग्रुप सी एम्पलॉय) जोधपुर जरिये एरिया सेक्रेट्री, जयपुर। ..... प्रार्थी

बनाम

1. जनरल मैनेजर, भारतीय संचार निगम लि. (टेलीफोन विभग) कमला नेहरू नगर, पी. एण्ड .टी. कॉलोनी के पास, जोधपुर।

2. चीफ जनरल मैनेजर भारतीय संचार निगम लि. (टेलीफोन विभाग) राजस्थान सर्किल, जयपुर ।

3. भारत संघ जरिये मेम्बर्स आफॅ सर्विसेज, संचार भवन, नई दिल्ली।

4. जनरल मैनेजर भारतीय संचार निगम लिमिटेड (टेलीफोन विभाग), उदयपुर। ..... अप्राथी गण

रेफरेन्स अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947

उपस्थिति :–

(1) श्री वी.एस. गहलोत प्रतिनिधि प्रार्थी

(2) श्री थानाराम विश्नोई प्रतिनिधि अप्रार्थी

अवार्ड

दिनांक : 30-3-2007

1. भारत सरकार ने अपनी अधिसूचना क्रमांक एल. 40011/19/99-आई. आर. (डी.यू.) दिनांक 18-2-2000 द्वारा निम्न् विवाद अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947 के तहत इस न्यायालय को रेफर किया है:–

"Whether the demand of National Telecom Staff Union (Gr.'C' Employees), Jodhpur regarding pay scale Rs. 950—1500 (prerevised) for the post of workmen Telecom wing at per with wiremen working in Civil wing is legal and justified? If not, to what relief the concerned union is entitled ?".

2. प्रार्थी यूनियन की ओर से मांग-पत्र इस आशय का प्रस्तुत किया गया है कि परिशिष्ठ "अ" में नामांकित सदस्य सन् 1969 से व अन्य तारीखों से अप्रार्थी के अधीन नियोजित कर्मचारी जिनकी नियुक्ति की विभिन्न तारीखें अंकित की गई, वेतन श्रृंखला 110-3-131 ई-बी-4-155 के योग्य थे ये सभी कर्मचारी सलेक्शन व चयन समिति के द्वारा वायरमैन के पद की योग्यता व परियता के आधार पर चयनित किये गये थे इनमें से कुछ कर्मचारी आई.टी.आई. डिप्लोमा होल्डर 10वीं पास योग्यता वाले व्यक्ति भी थे तथा सभी नियुक्ति तिथि से ग्रेड 110-155 प्राप्त करने के अधिकारी थे परन्तु, अप्रार्थीगण ने जानबूझकर वेतन श्रृंखला 75-1-85-इबी-2-95 दी गई जबकि प्रार्थीगण के साथ वाले कर्मचारियों को 110-155 वाला ग्रेड दिया गया। उक्त भेदभाव रवैये के विरुद्ध प्रार्थी व इनके सदस्यों ने अप्राथीगण को प्रतिवेदन-पत्रों द्वारा अवगत् कराया, अप्रार्थीगण आश्वासन देते रहे लेकिन वेतन श्रृंखला 110-155 का लाभ नहीं दिया गया। तत्पश्चात् अप्रार्थीगण द्वारा अन्य कर्मचारियों को वेतन श्रृंखला 260-350 दी गई व प्रार्थी के सदस्यों को वेतन श्रृंखला 210-270 दी गई जिसके विरुद्ध भी प्रार्थी यूनियन द्वारा प्रतिवेदन दिये, वकील द्वारा नोटिस भी किया गया। अप्रार्थीगण ने तीसरी वेतन रिपोर्ट में प्रार्थी सदस्यों को कम वेतन श्रृंखला में फिक्स कर घोर अन्याय किया है। प्रार्थी यूनियन के सदस्यों को परिशिष्ठ "अ" में दर्शाये अनुसार नियुक्ति की तिथि से वेतन 110-155 फिक्स कर बाद में वेतन परिवर्तन हुए जब से वेतन श्रृंखला 260-350 व इसके बाद 950-1500 तथा पांचव वेतन आयोग द्वारा किये गये वेतन निर्धारित श्रृंखला दिलाये जाने को एवार्ड पारित किया जावे।

3. अप्रार्थीगण की ओर से जवाब में कहा गया है कि अप्रार्थीगण द्वारा कोई भेदभाव नहीं किया गया। टेलीकॉम विंग में वायर मैन के रिक्रूटमेन्ट के लिये न्यूनतम आवश्यक मिडिल पास या इसके समान योग्यता है, प्रारम्भ में टेलीकॉम विंग में रिक्रूटमेन्ट के लिए वेतन श्रृंखला 75-1-85 ईबी-2-95 थी जिसको रिवाईज कर तृतीय पे-कमीशन के अनुसार 210-4-250-इबी-5-270 किया गया व चतुर्थ पे-कमीशन के अनुसार यह वेतन श्रृंखला 825-15-900-ईबी-20-1200 कर दी गई व पांचवे पे-कमीशन के अनुसार यह वेतन श्रृंखला 2750-70-3800-75-4400 कर दी गई। टेलीकॉम विभाग में सिविल विंग मेन्टिनेन्स आम्परेटिव स्टाफ के 1987 के रिक्रूटमेन्ट के नियमों के तहत वायरमैन के रिक्रूटमेन्ट के लिए मिनिमम शैक्षणिक योग्यता इलेक्ट्रिकल वर्कमैन का परमिट/वर्कमैन का सक्षमता प्रमाण-पत्र/इलेक्ट्रिकल वर्कमैन का लाईसेंस व दो साल का लाईन का अनुभव होना चाहिये, सिविल विंग में वायर मैन के भर्ती के नियम व वेतन श्रृंखला भिन्न है, इनमें कोई समानता नहीं है, परिशिष्ठ "अ" में 1969 से व अन्य तारीखों से नियोजित श्रमिकों को 110-155 वेतन श्रृंखला का लाभ नहीं दिया जा सकता क्योंकि उनकी न्यूनतम शैक्षणिक योग्यता केवल मिडिल पास मांगी गई थी तथा नियमानुसार उन्हें केवल 75-95 की वेतन श्रृंखला ही दी जा सकती थी, अप्रार्थीगण ने प्रार्थीगण को कोई आश्वासन नहीं दिया। विभागीय नियमानुसार टेलीकॉम विंग के रिक्रूटमेन्ट रूल्स के तहत 210-270 की वेतन श्रृंखला दी जो उचित है। प्रार्थीगण की यह मान्यता आधारहीन है कि उन्हें नियुक्ति की तिथि से 110-155 व उसके बाद अन्य वेतन श्रृंखला का लाभ दिया जावे। प्रार्थीगण किसी अनुतोष के अधिकारी नहीं हैं। प्रार्थीगण का मांग-पत्र सव्यय खारिज किया जाये।

4. प्रार्थी यूनियन की ओर से अरविन्द सिंह सांखला का शपथ-पत्र प्रस्तुत किया गया जिसपर अप्रार्थी प्रतिनिधि द्वारा जिरह की गई तथा अप्रार्थी की ओर से एम.एल.चौहान उपमंडल अभियन्ता का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रार्थी प्रतिनिधि द्वारा जिरह की गई ।

5. दोनों पक्षों के प्रतिनिधिगण की बहस सुनी गई। पत्रावली का अवलोकन किया गया।

6. प्रार्थीगण का केस यह है कि वे टेलीकाम विंग में वायरमैन हैं व उन्हें भी सिविल विंग के वायरमैन के समान ही वेतन श्रृंखला दी जानी चाहिये इस संबध में प्रार्थी की ओर से जो साक्ष्य प्रस्तुत की गई है उसमें अरविंद सिंह सांखला ने अपनी साक्ष्य से यह कहा है कि परिशिष्ठ "अ" में दिखाये गये कर्मचारी व परिशिष्ठ "ब" में बताये गये कर्मचारी एक ही नियम के तहत चयनित हुए थे परिशिष्ट "ब" में बताये गये कर्मचारियों को वेतन श्रृंखला 110-155 दी गई जब कि प्रार्थीगण को जानबूझकर यह वेतन श्रृंखला नहीं दी गई। प्रार्थी यूनियन के सदस्य व वे वायरमैन जिन्हे उच्च वेतन श्रृंखला दी गई, सभी का कार्य समान है, इसके विरुद्ध जो प्रतिवेदन दिये गये उन्हें भी स्वीकार नहीं किया गया। प्रार्थी ने अपनी साक्ष्य में यह तो बताया है कि समय-समय पर कौन सी वेतन श्रृंखलाऐं दी गई परन्तु मुख्यतया इस न्यायालय को यह देखना है कि क्या प्रार्थीगण व वे वायरमैन जिन्हें

उच्च वेतन श्रृंखला दी गई का कार्य व योग्यता समान थी। इस संबध में प्रार्थीगण में आवश्यक तथ्य अपनी साक्ष्य में नहीं बताये हैं न ही उनके द्वारा यह बताया गया है कि उनके कार्य की प्रकृति व जिन्हे उच्च वेतन श्रृंखला दी गई उनके कार्य की प्रकृति किस प्रकार की थी। यह आवश्यक नहीं है कि एक ही नोमन क्लेचर के दो पदों हेतु अलग-अलग कार्य निर्धारित हो व इसके लिए वांछित योग्यता भी अलग-अलग हो। अप्रार्थी विभाग की ओर से श्री एम.एल.चौहान ने जो शपथ-पत्र दिया है उसके अनुसार टेलीफोन विभाग में सिविल विंग मेन्टीनेन्स ऑपरेटिव स्टाफ ने 1987 के रिक्रूटमेंट नियम के तहत वायरमैन के लिए न्यूनतम शैक्षणिक योग्यता में उसे इलेक्ट्रिकल वर्कमैन का लाइसेंन्स व कोई समान योग्यता का प्रमाण-पत्र दो साल का इस लाईन के अनुभव का होना चाहिये जब कि टेलीकॉम विंग में भर्ती वायरमैन के नियम व वेतन श्रृंखला अलग है क्योंकि उनकी न्यूनतम शैक्षणिक योग्यता मिडिल पास थी। ऐसी स्थिति में वेतन श्रृंखला में विभिन्न वेतन आयोगों की सिफारिश के बाद जो भिन्नता रखी गई है उसका आधार है । चूंकि टेलीकोम विंग व सिविल विंग के कर्मचारियों के कार्य की प्रकृति व उनकी योग्यता समान नहीं है । प्रार्थीगण द्वारा इन तथ्यों को रिबट करने हेतु ऐसा कोई तथ्य नहीं बताया है जिसके आधार पर यह माना जा सके कि उनकी व सिविल विंग में कार्य कर रहे वायरमैन की भर्ती के समय योग्यता समान हो व कार्य की प्रकृति भी बिल्कुल समान हो । विभिन्न वेतन आयोगों द्वारा वेतन श्रृंखलाओं में जो भिन्नता रखी गई है उसका उचित आधार प्रतीत होता है । ऐसी स्थिति में प्रार्थीगण यह सिद्ध नहीं कर पाये हैं कि समान कार्य समान वेतन के सिद्धांत के आधार पर वे भी सिविल विंग के वायरमैन के बराबर वेतन श्रृंखला पाने के अधिकारी हैं ।

7. प्रार्थीगण की ओर से यह तर्क दिया गया हे कि प्रार्थीगण केन्द्रीय सरकार के तत्कालीन समय में नियमित कर्मचारी थी अतः इस प्रकार का विवाद केन्द्रीय प्रशासनिक अधिकरण में ही उठाया जा सकता था । अप्रार्थीगण का यह तर्क माने जाने योग्य नही है चूंकि इस न्यायालय को क्षेत्राधिकार केन्द्रीय सरकार के रेफरेन्स से प्राप्त हुआ है व केन्द्रीय सरकार इस प्रकार का रेफरेन्स करने के लिए औद्योगिक विवाद अधिनियम, 1947 के अन्तर्गत अधिकृत है।

8. उक्त विवेचन के अनुसार इस रेफरेन्स का उत्तर इस अवार्ड की टर्म्स में निम्नप्रकार दिया जाता है:

9. प्रार्थी यूनियन की सिविल विंग के वायरमैन के समान वेतन श्रृंखला दिये जाने की मांग उचित व वैध नहीं है। अतः प्रार्थीगण किसी अनुतोष के अधिकारी नहीं है।

10. इस अवार्ड को प्रकाशनार्थ भारत-सरकार को प्रेषित किया जाये।

पुष्पेन्द्र सिंह हाड़ा, न्यायाधीश

नई दिल्ली, 11 मई, 2007

का.आ. 1618.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय जोधपुर के पंचाट (संदर्भ संख्या) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-5-2007 को प्राप्त हुआ था।

[सं. एल-40011/18/99-आई आर (डी. यू.)]
सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 11th May, 2007

S.O. 1618.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Labour Court, Jodhpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Department of Telecom and their workman, which was received by the Central Government on 11-05-2007.

[No. L-40011/18/99-IR(DU)]
SURENDRA SINGH, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर।

पीठासीन अधिकारी : श्री पुष्पेन्द्रसिंह हाड़ा,
आर.एच.जे.एस.

औद्योगिक विवाद (केन्द्रीय) सं. 37/2001

दी ऐरिया सेक्रेट्री नेशनल टेलीकॉम स्टाफ यूनियन (ग्रुप सी एम्पलाईज) 104, के.5-सी लवकुश फार्म, जोधपुर। ..... प्रार्थी

बनाम

1. दी जनरल मैनेजर, टेलीकॉम डिपार्टमेन्ट, कमला नेहरू नगर, पी.एण्ड टी. कॉलोनी, जयपुर।

2. चीफ जनरल मैनेजर, टेलीफोन डिपार्टमेंन्ट राजस्थान सर्किल, जयपुर। ..... अप्राथी

रेफरेन्स अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम,1947

उपस्थिति :-

(1) श्री वी.एस. गहलोत प्रतिनिधि प्रार्थी

(2) श्री थानाराम विश्नोई प्रतिनिधि अप्रार्थीगण

अवार्ड

दिनांक : 30-3-2007

1. भारत सरकार ने अपनी अधिसूचना क्रमांक एल.-40011/18/99 आई.आर. (डी.यू.) दिनांक 18-2-2000 द्वारा निम्न विवाद अन्तर्गत धारा 10 औद्योगिक विवाद अधिनियम, 1947 के तहत इस न्यायालय को रेफर किया है:-

"Whether the action of Telecom Department in not giving the officiating and promotion for the post of

Phone Mechenic to the wireman who are matric and I.T.I. on the basis of seniority (walk in group) is legal and justified ? If not, to what relief the concerned Union is entitled ?".

2. प्रार्थी की ओर से मांग-पत्र इस आशय का प्रस्तुत किया गया है कि संलग्न लिस्ट में बताये गये कर्मचारी प्रार्थी यूनियन के सदस्य है जो अप्रार्थी सं. 1 के अधीन कार्यरत है उनकी सेवा अवधि 23 से 32 साल तक वायरमैन की हैसियत से पूर्ण हो चुकी है, ये सभी चयनित समिति द्वारा चयनित होकर अप्रार्थीगण द्वारा नियुक्त किये गए थे इनमें से कई कर्मचारी आठवीं/दसवीं व आई. टी. आई. पास थे जो कर्मचारी आई. टी. आई. डिप्लोमा व दसवीं पास थे उन्हें दो वेतन वृद्धियां दी गई परन्तु उनके साथ चयनित कर्मचारी को अग्रिम वेतन न देकर उनके साथ भेदभावपूर्ण रवैया अपनाया गया, अप्रार्थीगण द्वारा चयनित होने के बाद ऐसे कर्मचारियों ने चार महीने प्रशिक्षण लिया जिसके बाद उन्हें वायरमैन के पद पर नियमित कर दिया गया, 1997 में अप्रार्थी सं. 3 ने एक आदेश दिया जिसके अनुसार ऑफिसिएटिंग फोन मैकेनिक पद पर 1-1-94 से ट्रेन्ड ऑफिसर्स कम वरीयता के आधार पर पदोन्नति दिये जाने का निर्देश दिया गया परन्तु इसकी पालना अप्रार्थीगण द्वारा नहीं की गई। अप्रार्थी सं. 2 द्वारा 1998 में रिस्केडर परीक्षा के लिए आवेदन मांगे गये जो 1994 की घोषणा के विरुद्ध था, अप्रार्थी सं. 2 ने लिस्ट प्रकाशित की जिसमें एक लिस्ट में 330 केन्डिडेट व दूसरी लिस्ट फोन मैकेनिक के 22 सदस्यों का नाम लिखा गया, यह सूचि मनगढ़ंत रूप से बनाई गई व सीनियर व अनुभवी व्यक्तियों का नाम लिस्ट मे सम्मिलित नहीं किया गया जब कि प्रार्थी यूनियन के सदस्य वायरमैन के पद पर लम्बे समय से कार्य कर रहे है। प्रार्थी यूनियन को नहीं बताया गया कि परीक्षा का आधार या विषय क्या होगा, डरा-धमकाकर फार्म भरवाये गये व फार्म न भरने की स्थिति में विभागीय कार्यवाही करने को कहा गया। अप्रार्थीगण के आदेश दिनांक 13-11-97 के अनुसार प्रार्थीगण 1-1-94 से लाभांश प्राप्त करने के अधिकारी ये जो उन्हें नहीं दिया गया अत: यह उन्हें दिलवाया जावे । 6-4-97 के आदेश से जो सूचि तैयार की गई वह नियम विरुद्ध है अत: इसे निरस्त किया जाए।

3. अप्रार्थी द्वारा जवाब प्रस्तुत कर यह कहा गया है कि प्रार्थी यूनियन व उसके सदस्य केन्द्रीय सरकार के नियमित कर्मचारी हैं अत: इस प्रकार के विवाद की सुनवाई केन्द्रीय प्रशासनिक अधिकरण द्वारा ही की जा सकती है व प्रश्नगत् विवाद औद्योगिक विवाद की परिभाषा में नहीं आता। प्रार्थी यूनियन न तो रजिस्टर्ड संस्था है न सरकार द्वारा मान्यता प्राप्त यूनियन है अत: वह प्रार्थीगण का प्रतिनिधित्व नहीं कर सकती। अप्रार्थीगण के अनुसार जोधपुर दूर संचार में कार्यरत् ऐसे वायरमैन जिन्होंने आई. टी. आई डिप्लोमा या दसवीं कक्षा पास की है उन्हें दो अग्रिम वेतन वृद्धियाँ दी गई अन्य को अग्रिम वेतन वृद्धियाँ देने का कोई औचित्य नहीं बनता है। चयनित व्यक्तियों को चार माह का प्रशिक्षण दिया गया, यह स्वीकार्य है। अप्रार्थी सं. 3 द्वारा जरिये प्रपत्र दिनांक 13-11-97 के अनुसार उपलब्ध रिक्त पदों पर नियमानुसार वरियता सूचि बनाकर 1-1-94 से फोन मैकेनिक के पद पर ऑफिसिएटिंग पदोन्नती दी गई, अप्रार्थी सं. 2 की ओर से जरिये पत्र दिनांक 26-2-98 अप्रार्थी सं. 3 द्वारा जवाब प्रपत्र दिनांक 13-11-97 के विपरीत नहीं है बल्कि अप्रार्थी विभाग के आदेश की पूर्णतया योग्य व्यक्तियों को जो कि योग्यता सूचि में शामिल थे में 1-1-94 से उपलब्ध रिक्त पदों पर फोन मैकेनिक के पद पर ऑफिसिएटिंग पदोन्नती दी गई, अप्रार्थी सं. 2 द्वारा सूचि नियमानुसार जारी की गई, समस्त योग्य उम्मीदवारों से आवेदन मांगे गये, उसी आधार पर नियमानुसार कार्यवाही की गई।

4. मांग-पत्र के समर्थन में अरविंद सिंह सांखला का शपथ-पत्र प्रस्तुत किया गया जिस पर अप्रार्थी प्रतिनिधी द्वारा जिरह की गई तथा अप्रार्थी की ओर से एम. एल. चौहान का शपथ-पत्र प्रस्तुत किया गया जिस पर प्रार्थी प्रतिनिधी द्वारा जिरह की गई।

5. दोनों पक्षों की बहस सुनी गई। पत्रावली का अवलोकन किया गया।

6. प्रार्थी की ओर से अरविंद सिंह सांखला ने मांग-पत्र में बताये गये तथ्यों को शपथ-पत्र में दोहराया है व अपनी साक्ष्य में यह कहा है कि ऐसे वायरमैन जिनकी 23 से 35 साल की सेवा पूरी हो चुकी थी उन्हें भी दो अग्रिम वेतन वृद्धियां नहीं दी गई, सिर्फ उन्हीं को वेतन वृद्धि दी गई जो. आई. टी. आई. या दसवीं पास थे। इस प्रकार ऑफिसिएटिंग फोन मैकेनिक के पद पर पदोन्नती हेतु जो सूचि बनाई गई वह भी नियमानुसार व परिपत्र के अनुसार नहीं बनाई गई। जिरह में इस गवाह ने यह स्वीकार किया है कि यह सही है कि फोन मैकेनिक के लिए आई. टी. आई. पास होना जरूरी है । वायरमैन का नैक्स्ट प्रमोशन हायर ग्रेड वायरमैन होता है। सन् 2000 में बी. एस. एन. एल. के गठन के बाद लाईनमैन वायरमैन केवल-जोईन्डर व ड्राईवर सभी को फोन मैकेनिक बना दिया गया, इन सभी लोगों की विभागीय परीक्षा ली गई जो उत्तीर्ण हुए उन्हें फोन मैकेनिक बनाया। 1-1-94 को डी. ओ. टी. ने आदेश निकाला था कि वरिष्ठता के आधार पर ऑफिसिएटिंग दे दिया जाए, बाद में ट्रेनिंग कराई जाए, उस आदेश में योग्यता का हवाला नहीं था, 1-1-94 का आदेश पेश नहीं किया है।

7. इस संबंध में अप्रार्थीगण की ओर से जो साक्ष्य प्रस्तुत की गई है उसमें श्री एम. एल. चौहान ने अपनी साक्ष्य में यह कहा है कि प्रारम्भ में टेलीकोम विंग में रिक्रूटमेंट के लिए वेतन शृंखला 75-1-85-ईबी-2-95 थी, जिसको रिवाईज कर तृतीय पे-कमीशन के अनुसार 210-4-250 ईबी-5-270 किया गया व चतुर्थ पे-कमीशन के अनुसार यह वेतन शृंखला 825-15-900 ईबी-20-1200 कर दी गई व पांचवे वेतन कमीशन के अनुसार यह वेतन शृंखला 2750-70-3800-75-4400 कर दी गई। टेलीकॉम विभाग ने सिविल विंग मेन्टीनेन्स ऑपरेटिव स्टाफ के 1987 के रिक्रूटमेन्ट के नियमों के तहत वायर मैन के रिक्रूटमेन्ट के लिए मिनिमम शैक्षणिक योग्यता में उसे इलेक्ट्रिकल वर्कमैन का लाईसेन्स (कम्पीटेंसी कला द्वितीय का प्रमाण-पत्र) और कोई समान योग्यता का प्रमाण-पत्र दो साल का इस लाईन के अनुभव का होना चाहिए। सिविल विंग के मेन्टीनेन्स व ऑपेरिटव स्टाफ में वायर मैन की प्रारम्भ में वेतन शृंखला 110-3-131-ईबी-4-155 थी, जिसे तृतीय पे-कमीशन में रिवाईज

कर 260-6-326-ईबी-8-350 कर दिया गया। चतुर्थ पे-कमीशन में यह वेतन शृंखला 950-20-1150-ईबी-25-1500 कर दी गई। इस प्रकार प्रार्थीगण की यह मान्यता गलत व आधारहीन है कि वे कर्मचारी जिनको टेलिकोम विंग में नियुक्ति दी गई थी उनको वेतन शृंखला 110-155 का लाभ दिया जाए। क्योंकि सिविल विंग में वायरमैन के भर्ती के नियम व वेतन शृंखला भिन्न हैं टेलिकॉम विंग के वायरमैन के भर्ती के नियम व वेतन शृंखला भिन्न है इसमें कोई समानता नहीं है। टेलिकॉम विंग में भर्ती वायरमैनों की जो कि पैरा दो में परिशिष्ट "अ" में 1969 से व अन्य तारीखों से नियोजित हैं उनको स्पष्ट रुपये 110-155 वेतन श्रृंखला का लाभ नहीं दिया जा सकता क्योंकि उनकी न्यूनतम शैक्षणिक योग्यता केवल मीडल पास मांगी गई थी और उनके केवल 75-95 की वेतन शृंखला ही नियमानुसार ही दी जा सकती है। उनके साथ कोई भेदभाव नहीं किया गया है न ही मनमर्जीपूर्ण भेदभाव का तरीका अपनाया गया है।

8. जहां तक उन वायरमैन को जो आई. टी. आई. या दसवीं पास को वेतन वृद्धि देने का प्रश्न है, प्रार्थीगण यह नहीं बता पाये है कि ऐसा अप्रार्थी विभाग द्वारा नियम विरूद्ध किया गया हो। जैसा प्रार्थी ने अपनी जिरह में स्वीकार किया है कि वायरमैन से फोन मैकेनिक के पद पर प्रयोग हेतु आई. टी. आई. पास होना जरूरी है ऐसी स्थिति में तकनिकी रूप से प्रशिक्षित कर्मचारियों को अतिरिक्त वेतन वृद्धि दिया जाना अनुचित नहीं माना जा सकता।

9. जहां तक फोन मैकेनिक के पद पर ऑफिसिटींग रूप से पदोन्नती दिये जाने हेतु सुचि का प्रश्न है, प्रार्थीगण द्वारा न तो 1-1-94 का परिपत्र प्रस्तुत किया गया है न ही वे परिस्थितियां बताई गई है जिससे यह माना जा सके कि अप्रार्थी विभाग द्वारा उक्त परिपत्र के विपरित कोई कार्यवाही की गई हो। यह स्वीकार्य स्थिति है कि प्रार्थीगण से भी आवेदन मांगे गये, प्रार्थीगण यह नहीं बता पाये है कि उच्च पद के लिए वरीयता ही एकमात्र मापदण्ड निर्धारित था। इस प्रकार प्रार्थीगण ऐसा कोई तथ्य नही बता पाये हैं जिससे यह माना जा सके कि अप्रार्थी विभाग द्वारा फोन मैकेनिक के पद पर ऑफिसिटींग प्रमोशन देने के लिए जो प्रक्रिया अपनाई गई वह नियम विरूद्ध हो।

10. अप्रार्थीगण की ओर से यह तर्क लिया गया है कि प्रार्थीगण केन्द्रीय सरकार के तत्कालीन समय में नियमित कर्मचारी थे अत: इस प्रकार का विवाद केन्द्रीय प्रशासनिक अधिकरण में ही उठाया जा सकता था। अप्रार्थीगण का यह तर्क माने जाने योग्य नहीं है। चूंकि इस न्यायालय को क्षेत्राधिकार केन्द्रीय सरकार के रेफरेन्स से प्राप्त हुआ है व केन्द्रीय सरकार इस प्रकार का रेफरेन्स के लिए औद्योगिक विवाद अधिनियम, 1947 के अन्तर्गत अधिकृत है।

11. अत: यह नहीं माना जा सकता कि प्रार्थीगण को वायरमैन से फोन मैकेनिक के पद पर नियुक्ति नहीं दिया जाना अवैध या अनुचित हो।

12. उक्त विवेचन के अनुसार इस रेफरेन्स का उत्तर निम्न अवार्ड की टर्म्स में दिया जाता है:

13. अप्रार्थीगण द्वारा प्रार्थीगण को फोन मैकेनिक के पद पर ऑफिसिटींग प्रमोशन न दिया जाना वैध व उचित था। अत: प्रार्थीगण कोई अनुतोष प्राप्त करने के अधिकारी नहीं है।

14. इस अवार्ड को प्रकाशनार्थ केन्द्रीय सरकार को प्रेषित किया जावे।

पुष्पेन्द्र सिंह हाड़ा, न्यायाधीश

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